

COPY

UNITED STATES DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE

GLEN CANYON NATIONAL RECREATION AREA

ANTELOPE POINT RESORT AND MARINA

Marina and Land Based Accommodations, Facilities and Services

CONCESSION CONTRACT NO. CC-GLCA007-03

**Antelope Point Holdings, L.L.C., an Arizona limited liability company
4935 E. Valley Vista Lane
Paradise Valley, Arizona 85253**

(602) 230-9000

Covering the Period

January 1, 2003 through December 31, 2022

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1
2 THIS CONTRACT is made and entered into by and between the United States of America,
3 acting in this matter by the Director of the National Park Service, through the Regional Director
4 of the Intermountain Region, (hereinafter referred to as the "Director"), and Antelope Point
5 Holdings L.L.C., an Arizona limited liability company (hereinafter referred to as the
6 "Concessioner"):

7
8
9 **W I T N E S S E T H:**

10
11 **THAT WHEREAS,** Glen Canyon National Recreation Area is administered by the Director as a
12 unit of the national park system to conserve the scenery and the natural and historic objects and
13 the wildlife therein, and to provide for the public enjoyment of the same in such manner as will
14 leave such Area unimpaired for the enjoyment of future generations; and

15
16 **WHEREAS;** Navajo Trust Lands, located adjacent to the Area, are administered by the Navajo
17 Nation and the Bureau of Indian Affairs, ("Bureau"), to provide the Navajo People a fair
18 economic and social benefit from their use for present and future generations of Navajo People;
19 and

20
21 **WHEREAS;** a Quadrilateral Agreement ("Quadrilateral Agreement") between the Navajo
22 Nation, National Park Service, Bureau of Indian Affairs, and the Bureau of Reclamation,
23 approved by the Secretary on September 11, 1970, accords each of the parties to the
24 Quadrilateral Agreement certain rights and responsibilities relating to the development,
25 maintenance, and management of the Area and related Navajo Trust Lands; and

26
27 **WHEREAS,** to accomplish these purposes, the Director has determined that certain visitor
28 services are necessary and appropriate for the public use and enjoyment of the Area and should
29 be provided for the public visiting the Area; and

30
31 **WHEREAS,** a Memorandum of Understanding ("MOU") between the National Park Service,
32 the Bureau of Indian Affairs, and the Navajo Nation, approved by the Secretary, and the Tribal
33 Council for the Navajo Nation on September 16, 1994, and July 12, 1994, respectively, accords
34 to each party thereto certain responsibilities in the management of the Area and related Navajo
35 Trust Lands; and

36
37 **WHEREAS,** the Concessioner, pursuant to a Business Site Lease with the Navajo Nation
38 ("Business Site Lease"), approved by the Bureau and executed contemporaneously with this
39 CONCESSION CONTRACT, is a Lessee of and authorized by the Navajo Nation to undertake
40 specified business activities on certain Navajo Trust Lands immediately adjacent to the lands of
41 the Area assigned to the Concessioner by this CONCESSION CONTRACT; and

42
43 **WHEREAS,** the activities of the Concessioner and the activities of the Concessioner as a
44 Navajo Nation Lessee complement and support an overall program of visitor services and
45 facilities at Antelope Point; and

1 **WHEREAS**, in recognition of this fact, the National Park Service and the Navajo Nation have
2 entered into a Bridge Agreement ("Agreement"), as contemplated by the Memorandum of
3 Understanding, which sets forth certain rights and responsibilities of the parties thereto with
4 respect to contract supervision and oversight of the operations of the Concessioner under this
5 **CONCESSION CONTRACT** and to lease supervision and oversight of the operations of the
6 Lessee under the Business Site Lease; and

7
8 **WHEREAS**, the Navajo Nation is authorized by the Quadrilateral Agreement to construct, or to
9 cause to be constructed, on certain Area lands through requirements of its Business Site Lease
10 certain non-income producing recreational facilities and improvements as described herein; and

11
12 **WHEREAS**, the Director desires the Concessioner to establish and operate these visitor services
13 at reasonable rates under the supervision and regulation of the Director; and

14
15 **WHEREAS**, the Director desires the Concessioner to conduct these visitor services in a manner
16 that demonstrates sound environmental management, stewardship, and leadership;

17
18 **NOW, THEREFORE**, pursuant to the authority contained in the Acts of August 25, 1916 (16
19 U.S.C. 1, 2-4), and November 13, 1998 (Pub.L. 105-391), and other laws that supplement and
20 amend the Acts, the Director and the Concessioner agree as follows:

21
22
23 **SEC. 1. TERM OF CONTRACT**

24
25 This Concession Contract No. GLCA007-03 ("CONTRACT") shall be effective as of the date
26 of execution, and shall be for the term of not more than twenty (20) years if the Concessioner
27 satisfactorily completes the Concession Facilities Improvement Program described in Section
28 9(e) of this CONTRACT. If the Concessioner fails to complete this program to the satisfaction
29 of the Director within the time specified, then this CONTRACT shall be for the term of ten (10)
30 years until its expiration ten years after the date of execution. The Director may extend this
31 shortened term (but not beyond the original date of expiration of this CONTRACT) in
32 circumstances where the Director determines that the delay resulted from events beyond the
33 control of the Concessioner.

34
35 **SEC. 2. DEFINITIONS**

36
37 The following terms used in this CONTRACT will have the following meanings, which apply to
38 both the singular and the plural forms of the defined terms:

39
40 (a) "Applicable Laws" means the laws of Congress governing the Area, including, but not
41 limited to, the rules, regulations, requirements and policies promulgated under those laws (e.g.,
42 36 CFR Part 51), whether now in force, or amended, enacted or promulgated in the future,
43 including, without limitation, federal, state and local laws, rules, regulations, requirements and
44 policies governing nondiscrimination, protection of the environment and protection of public
45 health and safety.

1 (b) "Area" means the property within the boundaries of Glen Canyon NRA and Rainbow Bridge
2 National Monument

3
4 (c) "Best Management Practices" or "BMPs" are policies and practices that apply the most
5 current and advanced means and technologies available to the Concessioner to undertake and
6 maintain a superior level of environmental performance reasonable in light of the circumstances
7 of the operations conducted under this CONTRACT. BMPs are expected to change from time to
8 time as technology evolves with a goal of sustainability of the Concessioner's operations.
9 Sustainability of operations refers to operations that have a restorative or net positive impact on
10 the environment.

11
12 (d) "Capital Improvement" shall have the meaning set forth in Exhibit A to this CONTRACT.

13
14 (e) "Concession Facilities" shall mean all Area lands assigned to the Concessioner under this
15 CONTRACT and all real property improvements assigned to or constructed by the Concessioner
16 under this CONTRACT. The United States retains title and ownership to all Concession
17 Facilities.

18
19 (f) "Days" shall mean calendar days.

20
21 (g) "Director" means the Director of the National Park Service, acting on behalf of the Secretary
22 of the Interior and the United States, and his duly authorized representatives.

23
24 (h) "Exhibit" or "Exhibits" shall mean the various exhibits, which are attached to this
25 CONTRACT, each of which is hereby made a part of this CONTRACT.

26
27 (i) "Gross receipts" means the total amount received or realized by, or accruing to, the
28 Concessioner from all sales for cash or credit, of services, accommodations, materials, and other
29 merchandise made pursuant to the rights granted by this CONTRACT, including gross receipts
30 of subconcessioners as herein defined, commissions earned on contracts or agreements with
31 other persons or companies operating in the Area, and gross receipts earned from electronic
32 media sales, but excluding:

33
34 (1) intracompany earnings on account of charges to other departments of the operation
35 (such as laundry);

36
37 (2) charges for employees' meals, lodgings, and transportation;

38
39 (3) cash discounts on purchases;

40
41 (4) cash discounts on sales;

42
43 (5) returned sales and allowances;

44
45 (6) interest on money loaned or in bank accounts;

(7) income from investments;

(8) income from subsidiary companies outside of the Area;

(9) sale of property other than that purchased in the regular course of business for the purpose of resale;

(10) sales and excise taxes that are added as separate charges to sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid government agencies;

(11) receipts from the sale of handicrafts that have been approved for sale by the Director as constituting authentic American Indian, Alaskan Native, Native Samoan, or Native Hawaiian handicrafts.

(12) all monies paid into coin operated devices, except telephones, whether provided by the Concessioner or by others, shall be included in gross receipts. However, only revenues actually received by the Concessioner from coin-operated telephones shall be included in gross receipts. All revenues received from charges for in-room telephone or computer access shall be included in gross receipts.

(j) "Gross receipts of subconcessioners" means the total amount received or realized by, or accruing to, subconcessioners from all sources, as a result of the exercise of the rights conferred by a subconcession contract. A subconcessioner will report all of its gross receipts to the Concessioner without allowances, exclusions, or deductions of any kind or nature.

(k) "~~Leasehold Surrender Interest~~" shall have the meaning set forth in Exhibit A to this CONTRACT.

(l) "Leasehold Surrender Interest Value" or the "value" of a Leasehold Surrender Interest shall have the meaning set forth in Exhibit A to this CONTRACT.

(m) "Major Rehabilitation" shall have the meaning set forth in Exhibit A to this CONTRACT.

(n) "Possessory Interest" shall have the meaning set forth in Exhibit A to this CONTRACT.

(o) "Real Property Improvements" shall have the meaning set forth in Exhibit A to this CONTRACT.

(p) "Subconcessioner" means a third party that, with the approval of the Director, has been granted by a concessioner rights to operate under a concession contract (or any portion thereof), whether in consideration of a percentage of revenues or otherwise.

(q) "Superintendent" means the manager of the Area.

(r) "Visitor services" means the accommodations, facilities and services that the Concessioner is required and/or authorized to provide by section 3(a) of this CONTRACT.

SEC. 3. SERVICES AND OPERATIONS

(a) Required and Authorized Visitor Services

During the term of this CONTRACT, the Director requires and authorizes the Concessioner to provide the following visitor services for the public within the Area:

(1) Required Visitor Services. The Concessioner is required to provide the following visitor services during the term of this CONTRACT:

- 1) Boat slip rentals (250 – 300 covered and uncovered berths);
- 2) Houseboat rentals (60 – 100 boats);
- 3) Powerboat rentals (60 – 70 boats);

The maximum capacity for the project in accordance with the Antelope Point Development Concept Plan and Environmental Assessment is a mix of 420 boats and rental boat slips.

- 4) Groceries, gift, and merchandise sales at a marina store, and marina public restrooms;
- 5) Marina fuel dock;
- 6) Boat repair;
- 7) Boat sewage pump-out services;
- 8) Boat towing and chase boat services;
- 9) Interpretive and scenic boat tours (Up to 2 tourboats with a maximum number of visitors to Rainbow Bridge of 300 per day).

1 (2) Authorized Visitor Services. The Concessioner is authorized but not required to provide the
2 following visitor services during the term of this CONTRACT:
3

- 4 1) General marine services and support
 - 5 a) Administrative slips for agencies
 - 6 b) Commercial slips
 - 7 c) Public fishing dock
 - 8 d) Courtesy slips
- 9
- 10 2) Marine salvage and diving services;
- 11
- 12 3) Fishing guide services;
- 13
- 14 4) Launch, retrieval, and hauling of privately owned boats;
- 15
- 16 5) Overnight boat charters;
- 17
- 18 6) Training of vessel operators.
- 19
- 20 7) Brokering services for the sale or purchase of boats that hold wet storage
21 agreements at the marina facilities
- 22
- 23 8) Caretaking and incidental boat repair
- 24
- 25 9) Anchoring and piloting services
- 26
- 27 10) Water taxi service
- 28
- 29 11) Marina Village food and beverage service
- 30

31
32 **(b) Operation and Quality of Operation**

33 The Concessioner shall provide, operate and maintain the required and authorized visitor
34 services and any related support facilities and services in accordance with this CONTRACT to
35 such an extent and in a manner considered satisfactory by the Director. Except for any such
36 items that may be provided to the Concessioner by the Director, the Concessioner shall provide
37 the plant, personnel, equipment, goods, and commodities necessary for providing, operating and
38 maintaining the required and authorized visitor services in accordance with this CONTRACT.
39 The Concessioner's authority to provide visitor services under the terms of this CONTRACT is
40 non-exclusive.
41

42
43 **(c) Operating Plan**

44 The Director, acting through the Superintendent, shall establish and revise, as necessary, specific
45 requirements for the operations of the Concessioner under this CONTRACT in the form of an
46

1 Operating Plan (including, without limitation, a risk management program, that must be adhered
2 to by the Concessioner). The initial Operating Plan is attached to this CONTRACT as Exhibit
3 B. The Director in his discretion, after consultation with the Concessioner, may make reasonable
4 modifications to the initial Operating Plan that are in furtherance of the purposes of this
5 CONTRACT and are not inconsistent with the terms and conditions of the main body of this
6 CONTRACT.

7
8 **(d) Merchandise and Services**

9
10 (1) The Director reserves the right to determine and control the nature, type and quality of the
11 visitor services described in this CONTRACT, including, but not limited to, the nature, type, and
12 quality of merchandise, if any, to be sold or provided by the Concessioner within the Area.

13
14 (2) All promotional material, regardless of media format (i.e. printed, electronic, broadcast
15 media), provided to the public by the Concessioner in connection with the services provided
16 under this CONTRACT must be approved in writing by the Director prior to use. All such
17 material will identify the Concessioner as an authorized Concessioner of the National Park
18 Service, Department of the Interior.

19
20 (3) The Concessioner, where applicable, will develop and implement a plan satisfactory to the
21 Director that will assure that gift merchandise, if any, to be sold or provided reflects the purpose
22 and significance of the Area, including, but not limited to, merchandise that reflects the
23 conservation of the Area's resources or the Area's geology, wildlife, plant life, archeology, local
24 Native American culture, local ethnic culture, and historic significance.

25
26 **(e) Rates**

27
28 All rates and charges to the public by the Concessioner for visitor services shall be reasonable
29 and appropriate for the type and quality of facilities and/or services required and/or authorized
30 under this CONTRACT. The Concessioner's rates and charges to the public must be approved
31 by the Director in accordance with Applicable Laws and guidelines promulgated by the Director
32 from time to time.

33
34 **(f) Impartiality as to Rates and Services**

35
36 (1) Subject to Section (f)(2) and (f)(3), in providing visitor services, the Concessioner must
37 require its employees to observe a strict impartiality as to rates and services in all circumstances.
38 The Concessioner shall comply with all Applicable Laws relating to nondiscrimination in
39 providing visitor services to the public including, without limitation, those set forth in Exhibit C.

40
41 (2) The Concessioner may grant complimentary or reduced rates under such circumstances as
42 are customary in businesses of the character conducted under this CONTRACT. However, the
43 Director reserves the right to review and modify the Concessioner's complimentary or reduced
44 rate policies and practices as part of its rate approval process.

(3) The Concessioner will provide Federal employees conducting official business reduced rates for lodging, essential transportation and other specified services necessary for conducting official business in accordance with guidelines established by the Director. Complimentary or reduced rates and charges shall otherwise not be provided to Federal employees by the Concessioner except to the extent that they are equally available to the general public.

SEC. 4. CONCESSIONER PERSONNEL

(a) Employees

(1) The Concessioner shall provide all personnel necessary to provide the visitor services required and authorized by this CONTRACT.

(2) The Concessioner shall comply with all Applicable Laws relating to employment and employment conditions, including, without limitation, those set forth in Exhibit C.

(3) The Concessioner shall ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the public. The Concessioner shall have its employees who come in direct contact with the public, so far as practicable, wear a uniform or badge by which they may be identified as the employees of the Concessioner.

(4) The Concessioner shall establish pre-employment screening, hiring, training, employment, termination and other policies and procedures for the purpose of providing visitor services through its employees in an efficient and effective manner and for the purpose of maintaining a healthful, law abiding, and safe working environment for its employees. The Concessioner shall conduct appropriate background reviews of applicants to whom an offer for employment may be extended to assure that they conform to the hiring policies established by the Concessioner.

(5) The Concessioner shall ensure that its employees are provided the training needed to provide quality visitor services and to maintain up-to-date job skills.

(6) The Concessioner shall review the conduct of any of its employees whose action or activities are considered by the Concessioner or the Director to be inconsistent with the proper administration of the Area and enjoyment and protection of visitors and shall take such actions as are necessary to correct the situation.

(7) The Concessioner shall maintain, to the greatest extent possible, a drug free environment, both in the workplace and in any Concessioner employee housing, within the Area.

(8) The Concessioner shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and in the Area, and specifying the actions that will be taken against employees for violating this prohibition. In addition, the Concessioner shall establish a drug-free awareness program to inform employees about the danger of drug abuse in the workplace and the Area, the availability of drug counseling, rehabilitation and employee assistance programs, and the

1 Concessioner's policy of maintaining a drug-free environment both in the workplace and in the
2 Area.

3
4 (9) The Concessioner shall take appropriate personnel action, up to and including termination or
5 requiring satisfactory participation in a drug abuse or rehabilitation program which is approved
6 by a Federal, State, or local health, law enforcement or other appropriate agency, for any
7 employee that is found to be in violation of the prohibition on the unlawful manufacture,
8 distribution, dispensing, possession, or use of a controlled substance.

9
10 **(b) Employee Housing and Recreation**

11
12 (1) If the Concessioner is required to provide employee housing under this CONTRACT, the
13 Concessioner's charges to its employees for this housing must be reasonable.

14
15 (2) If the visitor services required and/or authorized under this CONTRACT are located in a
16 remote or isolated area, the Concessioner shall provide appropriate employee recreational
17 activities.

18
19
20 **SEC. 5. LEGAL, REGULATORY, AND POLICY COMPLIANCE**

21
22 **(a) Legal, Regulatory and Policy Compliance**

23
24 This CONTRACT, operations thereunder by the Concessioner and the administration of it by the
25 Director, shall be subject to all Applicable Laws. The Concessioner must comply with all
26 Applicable Laws in fulfilling its obligations under this CONTRACT at the Concessioner's sole
27 cost and expense. Certain Applicable Laws governing protection of the environment are further
28 described in this CONTRACT. Certain Applicable Laws relating to nondiscrimination in
29 employment and providing accessible facilities and services to the public are further described in
30 this CONTRACT.

31
32 **(b) Notice**

33
34 The Concessioner shall give the Director immediate written notice of any violation of Applicable
35 Laws by the Concessioner, including its employees, agents or contractors, and, at its sole cost
36 and expense, must promptly rectify any such violation.

37
38 **(c) How and Where to Send Notice**

39
40 All notices required by this CONTRACT shall be in writing and shall be served on the parties at
41 the following addresses. The mailing of a notice by registered or certified mail, return receipt
42 requested, shall be sufficient service. Notices sent to the Director shall be sent to the following
43 address:

44
45 Superintendent
46 Glen Canyon National Recreation Area

P.O. Box 1507
691 Scenic View Drive
Page, AZ 86040-1507
Attention: Chief, Business Management Division
(928) 608-6321 or (928) 608-6200

Notices sent to the Concessioner shall be sent to the following address:

Antelope Point Holdings, L.L.C., an Arizona limited liability company
4935 E. Valley Vista Lane
Paradise Valley, Arizona 85253
ddahl@pensusgroup.com
(602) 230-9000

SEC. 6. ENVIRONMENTAL AND CULTURAL PROTECTION

(a) Environmental Management Objectives

The Concessioner shall meet the following environmental management objectives (hereinafter "Environmental Management Objectives") in the conduct of its operations under this CONTRACT:

(1) The Concessioner, including its employees, agents and contractors, shall comply with all Applicable Laws pertaining to the protection of human health and the environment.

(2) The Concessioner shall incorporate Best Management Practices (BMPs) in its operation, construction, maintenance, acquisition, provision of visitor services, and other activities under this CONTRACT.

(b) Environmental Management Program

(1) The Concessioner shall develop, document, implement, and comply fully with, to the satisfaction of the Director, a comprehensive written Environmental Management Program (EMP) to achieve the Environmental Management Objectives. The initial EMP shall be developed and submitted to the Director for approval within sixty days of the effective date of this CONTRACT. The Concessioner shall submit to the Director for approval a proposed updated EMP annually.

(2) The EMP shall account for all activities with potential environmental impacts conducted by the Concessioner or to which the Concessioner contributes. The scope and complexity of the EMP may vary based on the type, size and number of Concessioner activities under this CONTRACT.

(3) The EMP shall include, without limitation, the following elements:

1 (i) Policy. The EMP shall provide a clear statement of the Concessioner's commitment to the
2 Environmental Management Objectives.

3 (ii) Goals and Targets. The EMP shall identify environmental goals established by the
4 Concessioner consistent with all Environmental Management Objectives. The EMP shall also
5 identify specific targets (i.e. measurable results and schedules) to achieve these goals.
6

7 (iii) Responsibilities and Accountability. The EMP shall identify environmental
8 responsibilities for Concessioner employees and contractors. The EMP shall include the
9 designation of an environmental program manager. The EMP shall include procedures for
10 the Concessioner to implement the evaluation of employee and contractor performance
11 against these environmental responsibilities.
12

13 (iv) Documentation. The EMP shall identify plans, procedures, manuals, and other
14 documentation maintained by the Concessioner to meet the Environmental Management
15 Objectives.
16

17 (v) Documentation Control and Information Management System. The EMP shall describe
18 (and implement) document control and information management systems to maintain
19 knowledge of Applicable Laws and BMPs. In addition, the EMP shall identify how the
20 Concessioner will manage environmental information, including without limitation, plans,
21 permits, certifications, reports, and correspondence.
22

23 (vi) Reporting. The EMP shall describe (and implement) a system for reporting
24 environmental information on a routine and emergency basis, including providing reports to
25 the Director under this CONTRACT.
26

27 (vii) Communication. The EMP shall describe how the environmental policy, goals, targets,
28 responsibilities and procedures will be communicated throughout the Concessioner's
29 organization.
30

31 (viii) Training. The EMP shall describe the environmental training program for the
32 Concessioner, including identification of staff to be trained, training subjects, frequency of
33 training and how training will be documented.
34

35 (ix) Monitoring, Measurement, and Corrective Action. The EMP shall describe how the
36 Concessioner will comply with the EMP and how the Concessioner will self-assess its
37 performance under the EMP, a least annually, in a manner consistent with NPS protocol
38 regarding audit of NPS operations. The self-assessment should ensure the Concessioner's
39 conformance with the Environmental Management Objectives and measure performance
40 against environmental goals and targets. The EMP shall also describe procedures to be taken
41 by the Concessioner to correct any deficiencies identified by the self-assessment.
42

43 (c) Environmental Performance Measurement 44

45 The Concessioner shall be evaluated by the Director on its environmental performance under
46

1 this CONTRACT, including, without limitation, compliance with the approved EMP, on at least
2 an annual basis.

3
4 **(d) Environmental Data, Reports, Notifications, and Approvals**

5
6 (1) Inventory of Hazardous Substances and Inventory of Waste Streams. The Concessioner shall
7 submit to the Director, at least annually, an inventory of federal Occupational Safety and Health
8 Administration (OSHA) designated hazardous chemicals used and stored in the Area by the
9 Concessioner. The Director may prohibit the use of any OSHA hazardous chemical by the
10 Concessioner in operations under this CONTRACT. The Concessioner shall obtain the
11 Director's approval prior to using any extremely hazardous substance, as defined in the
12 Emergency Planning and Community Right to Know Act of 1986, in operations under this
13 CONTRACT. The Concessioner shall also submit to the Director, at least annually, an inventory
14 of all waste streams generated by the Concessioner under this CONTRACT. Such inventory
15 shall include any documents, reports, monitoring data, manifests, and other documentation
16 required by Applicable Laws regarding waste streams.

17
18 (2) Reports. The Concessioner shall submit to the Director copies of all documents, reports,
19 monitoring data, manifests, and other documentation required under Applicable Laws to be
20 submitted to regulatory agencies. The Concessioner shall also submit to the Director any
21 environmental plans for which coordination with Area operations are necessary and appropriate,
22 as determined by the Director in accordance with Applicable Laws.

23
24 (3) Notification of Releases. The Concessioner shall give the Director immediate written notice
25 of any discharge, release or threatened release (as these terms are defined by Applicable Laws)
26 within or at the vicinity of the Area, (whether solid, semi-solid, liquid or gaseous in nature) of
27 any hazardous or toxic substance, material, or waste of any kind, including, without limitation,
28 building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product
29 or petroleum by-product.

30
31 (4) Notice of Violation. The Concessioner shall give the Director in writing immediate notice of
32 any written threatened or actual notice of violation from other regulatory agencies of any
33 Applicable Law arising out of the activities of the Concessioner, its agents or employees.

34
35 (5) Communication with Regulatory Agencies. The Concessioner shall provide timely written
36 advance notice to the Director of communications, including without limitation, meetings, audits,
37 inspections, hearings and other proceedings, between regulatory agencies and the Concessioner
38 related to compliance with Applicable Laws concerning operations under this CONTRACT. The
39 Concessioner shall also provide to the Director any written materials prepared or received by the
40 Concessioner in advance of or subsequent to any such communications. The Concessioner shall
41 allow the Director to participate in any such communications. The Concessioner shall also
42 provide timely notice to the Director following any unplanned communications between
43 regulatory agencies and the Concessioner.

44
45 **(e) Corrective Action**

(1) The Concessioner, at its sole cost and expense, shall promptly control and contain any discharge, release or threatened release, as set forth in this section, or any threatened or actual violation, as set forth in this section, arising in connection with the Concessioner's operations under this CONTRACT, including, but not limited to, payment of any fines or penalties imposed by appropriate agencies. Following the prompt control or containment of any release, discharge or violation, the Concessioner shall take all response actions necessary to remediate the release, discharge or violation, and to protect human health and the environment.

(2) Even if not specifically required by Applicable Laws, the Concessioner shall comply with directives of the Director to clean up or remove any materials, product or by-product used, handled, stored, disposed, or transported onto or into the Area by the Concessioner to ensure that the Area remains in good condition.

(f) Indemnification and Cost Recovery for Concessioner Environmental Activities

(1) The Concessioner shall indemnify the United States in accordance with section 12 of this CONTRACT from all losses, claims, damages, environmental injuries, expenses, response costs, allegations or judgments (including, without limitation, fines and penalties) and expenses (including, without limitation, attorneys fees and experts' fees) arising out of the activities of the Concessioner, its employees, agents and contractors pursuant to this section. Such indemnification shall survive termination or expiration of this CONTRACT.

(2) If the Concessioner does not promptly contain and remediate an unauthorized discharge or release arising out of the activities of the Concessioner, its employees, agents and contractors, as set forth in this section, or correct any environmental self-assessment finding of non-compliance, in full compliance with Applicable Laws, the Director may, in its sole discretion and after notice to the Concessioner, take any such action consistent with Applicable Laws as the Director deems necessary to abate, mitigate, remediate, or otherwise respond to such release or discharge, or take corrective action on the environmental self-assessment finding. The Concessioner shall be liable for and shall pay to the Director any costs of the Director associated with such action upon demand. Nothing in this section shall preclude the Concessioner from seeking to recover costs from a responsible third party.

(g) Weed and Pest Management

The Concessioner shall be responsible for managing weeds, and through an integrated pest management program, harmful insects, rats, mice and other pests on Concession Facilities assigned to the Concessioner under this CONTRACT. All such weed and pest management activities shall be in accordance with Applicable Laws and guidelines established by the Director.

(h) Protection of Cultural and Archeological Resources.

The Concessioner shall ensure that any protected sites and archeological resources within the Area are not disturbed or damaged by the Concessioner, including the Concessioner's employees,

agents and contractors, except in accordance with Applicable Laws, and only with the prior approval of the Director. Discoveries of any archeological resources by the Concessioner shall be promptly reported to the Director. The Concessioner shall cease work or other disturbance which may impact any protected site or archeological resource until the Director grants approval, upon such terms and conditions as the Director deems necessary, to continue such work or other disturbance.

SEC. 7. INTERPRETATION OF AREA RESOURCES

(a) Concessioner Obligations

(1) The Concessioner shall provide all visitor services in a manner that is consistent with and supportive of the interpretive themes, goals and objectives of the Area as reflected in Area planning documents, mission statements and/or interpretive prospectuses.

(2) The Concessioner may assist in Area interpretation at the request of the Director to enhance visitor enjoyment of the Area. Any additional visitor services that may result from this assistance ~~must be recognized in writing through written amendment of Section 3 of this CONTRACT.~~

(3) The Concessioner is encouraged to develop interpretive materials or means to educate visitors about environmental programs or initiatives implemented by the Concessioner.

(b) Director review of content

The Concessioner must submit the proposed content of any interpretive programs, exhibits, displays or materials, regardless of media format (i.e. printed, electronic, or broadcast media), to the Director for review and approval prior to offering such programs, exhibits, displays or materials to Area visitors.

SEC. 8. CONCESSION FACILITIES USED IN OPERATION BY THE CONCESSIONER

(a) Assignment of Concession Facilities

(1) The Director hereby assigns the following Concession Facilities to the Concessioner for the purposes of this CONTRACT:

(i) certain parcels of Area land as described in Exhibit D upon which, among other matters, the Concessioner may be authorized to construct real property; and

(ii) certain real property improvements described in Exhibit D in existence as of the effective date of this CONTRACT, as may be modified from time to time to include additional real property improvements completed in accordance with the terms and conditions of this CONTRACT.

(2) The Director shall from time to time amend Exhibit D to reflect changes in Concession Facilities assigned to the Concessioner, including, without limitation, amending Exhibit D to

1 reflect the addition of real property improvements completed in accordance with the terms and
2 conditions of this CONTRACT and to reflect the withdrawal of concession facilities as set forth
3 below.

4
5 **(b) Concession Facilities Withdrawals**

6 The Director may withdraw all or portions of these Concession Facilities assignments at any time
7 during the term of this CONTRACT if:

8
9 (1) the withdrawal is necessary for the purpose of conserving, preserving or protecting Area
10 resources or visitor enjoyment or safety;

11
12 (2) the operations utilizing the assigned Concession Facilities have been terminated or
13 suspended by the Director; or

14
15 (3) land or real property improvements assigned to the Concessioner are no longer necessary for
16 the concession operation.

17
18 **(c) Effect of Withdrawal**

19 Any permanent withdrawal of assigned Concession Facilities which the Director or the
20 Concessioner considers to be essential for the Concessioner to provide the visitor services
21 required by this CONTRACT will be treated as a termination of this CONTRACT pursuant to
22 Section 16. The Concessioner will be compensated pursuant to Section 17 for the value of any
23 Leasehold Surrender Interest it may have, if any, in permanently withdrawn Concession
24 Facilities. No other compensation is due the Concessioner in these circumstances.

25
26
27 **(d) Right of Entry**

28 The Director shall have the right at any time to enter upon or into the Concession Facilities
29 assigned to the Concessioner under this CONTRACT for any purpose he may deem necessary
30 for the administration of the Area.

31
32
33 **(e) Personal Property**

34
35 (1) Personal Property Provided by the Concessioner. The Concessioner shall provide all
36 personal property, including without limitation removable equipment, furniture and goods,
37 necessary for its operations under this CONTRACT, unless such personal property is provided
38 by the Director as set forth in subsection (e)(2).

39
40 (2) Personal Property Provided by the Government. The Director may provide certain items of
41 government personal property, including without limitation removable equipment, furniture and
42 goods, for the Concessioner's use in the performance of this CONTRACT. The Director hereby
43 assigns government personal property listed in Exhibit E to the Concessioner as of the effective
44 date of this CONTRACT. This Exhibit E will be modified from time to time by the Director as
45 items may be withdrawn or additional items added. The Concessioner shall be accountable to

1 the Director for the government personal property assigned to it and shall be responsible for
2 maintaining the property as necessary to keep it in good and operable condition. If the property
3 ceases to be serviceable, it shall be returned to the Director for disposition.

4
5 **(f) Condition of Concession Facilities**

6 The Concessioner has inspected the Concession Facilities and any assigned government personal
7 property, is thoroughly acquainted with their condition, and accepts the Concession Facilities,
8 and any assigned government personal property, "as is."

9
10
11 **(g) Utilities Provided by the Director.**

12 The Director may provide utilities to the Concessioner for use in connection with the operations
13 required or authorized hereunder when available and at rates to be determined in accordance with
14 Applicable Laws.

15
16
17 **(h) Utilities not provided by the Director**

18 If the Director does not provide utilities to the Concessioner, the Concessioner shall, with the
19 written approval of the Director and under any requirements that the Director shall prescribe,
20 secure necessary utilities at its own expense from sources outside the Area or shall install the
21 utilities within the Area with the written permission of the Director, subject to the following
22 conditions:

23
24
25 (1) If requested by the Director, the Concessioner must provide to the Director any utility
26 service provided by the Concessioner under this section to such extent as will not unreasonably
27 restrict anticipated use by the Concessioner. Unless otherwise agreed by the Concessioner and
28 the Director in writing, the rate per unit charged the Director for such service shall be
29 approximately the average cost per unit of providing such service; and

30
31 (2) All appliances and machinery to be used in connection with the privileges granted in this
32 subsection, as well as the plans for location and installation of such appliances and machinery,
33 shall first be approved by the Director.

34
35 **SEC. 9. CONSTRUCTION OR INSTALLATION OF REAL PROPERTY**
36 **IMPROVEMENTS**

37
38 **(a) Construction of Real Property Improvements**

39 The Concessioner may construct or install upon lands assigned to the Concessioner under this
40 CONTRACT only those real property improvements that are determined by the Director to be
41 necessary and appropriate for the conduct by the Concessioner of the visitor services required
42 and/or authorized under this CONTRACT. Construction or installation of real property
43 improvements may occur only after the written approval by the Director of their location, plans,
44 and specifications. The form and content of the application and the procedures for such
45 approvals, as may be modified by the Director from time to time, are set forth in Exhibit F. All
46

1 real property improvements constructed or installed by the Concessioner will immediately
2 become the property of the United States and be considered Concession Facilities.

3
4 **(b) Removal of Real Property Improvements**

5
6 (1) The Concessioner may not remove, dismantle, or demolish real property improvements in
7 the Area without the prior approval of the Director.

8
9 (2) Any salvage resulting from the authorized removal, severance or demolition of a real
10 property improvement within the Area shall be the property of the United States.

11
12 (3) In the event that an assigned real property improvement is removed, abandoned, demolished,
13 or substantially destroyed and no other improvement is constructed on the site, the Concessioner,
14 at its expense, shall promptly, upon the request of the Director, restore the site as nearly as
15 practicable to its original condition.

16
17 **(c) Leasehold Surrender Interest**

18
19 (1) Except as described in subsection 9(c)(3) of the CONTRACT, this CONTRACT hereby
20 provides the Concessioner, subject to all applicable definitions, requirements and limitations of
21 this CONTRACT and Exhibit A, a Leasehold Surrender Interest in Capital Improvements
22 constructed by the Concessioner under the terms of this CONTRACT, including, but not limited
23 to, those Capital Improvements constructed as part of the Concession Facilities Improvement
24 Program and those Capital Improvements which result from the Major Rehabilitation of an
25 existing real property improvement. Upon completion of a Major Rehabilitation by the
26 Concessioner, an existing real property improvement assigned to the Concessioner in which the
27 Concessioner had no Leasehold Surrender Interest prior to the Major Rehabilitation shall be
28 considered as a Capital Improvement for all purposes of this CONTRACT.

29
30 (2) This CONTRACT may provide the Concessioner a Leasehold Surrender Interest in real
31 property improvements resulting from possessory interest obtained under the terms of a
32 possessory interest concession contract. Exhibit G describes the real property improvements, if
33 any, in which the Concessioner has such a Leasehold Surrender Interest and states the value of
34 this Leasehold Surrender Interest as of the effective date of this CONTRACT.

35
36 (3) The Concessioner shall not obtain Leasehold Surrender Interest under this CONTRACT
37 except as may be provided in Exhibit A and Exhibit F. Among other matters, no Leasehold
38 Surrender Interest shall be obtained as a result of expenditures from the Repair and Maintenance
39 Reserve described in this CONTRACT, and this CONTRACT does not provide a Leasehold
40 Surrender Interest as a result of expenditures for repair and maintenance of Concession Facilities
41 of any nature. Leasehold Surrender Interest is not obtained for infrastructure improvements
42 identified in Section 9(d)(2)(i), and is hereby waived by the Concessioner, because the
43 Concessioner shall be reimbursed for the Infrastructure Development Program as specified in the
44 Navajo Nation Business Site Lease, Section 9 C(12) and Section 10E "Project Site Entrance Fee
45 Collection Program".
46

1
2 **(d) Concession Facilities Improvement Program**

3
4 (1) The Concessioner shall undertake and complete an improvement program (hereinafter
5 "Concession Facilities Improvement Program") costing not less than \$12,500,000 as adjusted
6 for each project to reflect par value in the year of actual construction in accordance with the
7 appropriate indexes of the Department of Labor's CPI-U Index, as published by the Department
8 of Labor.

9
10 (2) The Concession Facilities Improvement Program shall include:

11 i) Construction of marina infrastructure consisting of the following elements;

12 - Excavation and sculpting of the project areas geological contours in the
13 Colorado River channel drainage, in accordance with Corps of Engineer's
14 Permit No. 199450126, in order to provide development of the marina
15 complex.

16
17 - Construction of support facilities, including access roads, parking areas,
18 walkways and utilities, in order to provide development of the marina
19 complex.

20
21 ii) Construction of a marina complex consisting of the following elements;

- 22
23 - 250 to 300 rental slips
24 - Up to 6 slips each for Navajo Nation and Service marine emergency
25 and administrative purposes without charge
26 - Up to 10 slips may be made available for independent commercial
27 operators at a fair market value
28 - Boat rental docks
29

30
31 The maximum capacity for the project in accordance with the Antelope
32 Point Development Concept Plan and Environmental Assessment is a mix
33 of 420 boats and rental boat slips.

- 34
35 - Boat rental office
36 - Fuel dock (including fuel storage and delivery lines)
37 - Tourboat dock
38 - Courtesy docks
39

- Marina breakwater
- Boat sewage pump-out facilities
- Marina store
- Marina public restrooms
- Marina Village food and beverage service facility

iii) Construction of concessioner marina launch ramp

(3) The Concessioner shall commence construction under the Concession Facilities Improvement Program on or before one hundred and twenty (120) days after execution of this contract in a manner that demonstrates to the satisfaction of the Director that the Concessioner is in good faith carrying the Concession Facilities Improvement Program forward reasonably under the circumstances. No construction may begin until the Concessioner receives written approval from the Director of plans and specifications in accordance with Exhibit F. During the period of construction, the Concessioner shall provide the Director with such evidence or documentation, as may be satisfactory to the Director, to demonstrate that the Concession Facilities Improvement Program duly is being carried forward.

(4) The Concessioner shall complete and have the real property improvements available for public use on or before five years from the date of execution. The Director may extend this date in circumstances where the Director determines that the delay resulted from events beyond the control of the Concessioner.

(e) Personal Property Acquisition Program

The concessioner shall acquire a full range of rental/service vessels to accommodate a wide range of visitor needs including the following:

- Rental houseboats
- Rental powerboats
- Two (2) tour boats
- Chase/repair/towing vessels

The Concessioner shall complete and have the personal property acquisitions available for public use on or before three (3) years after the date of execution. The Director may extend this date in circumstances where the Director determines that the delay resulted from events beyond the control of the Concessioner.

SEC. 10. MAINTENANCE

(a) Maintenance Obligation

The Concessioner shall be solely responsible for maintenance, repairs, housekeeping, and groundskeeping for all Concession Facilities to the satisfaction of the Director.

(b) Maintenance Plan

For these purposes, the Director, acting through the Superintendent, shall undertake appropriate inspections, and shall establish and revise, as necessary, a Maintenance Plan consisting of specific maintenance requirements which shall be adhered to by the Concessioner. The initial Maintenance Plan is set forth in Exhibit H. The Director in his discretion may make reasonable modifications to the Maintenance Plan from time to time after consultation with the Concessioner. Such modifications shall be in furtherance of the purposes of this CONTRACT and shall not be inconsistent with the terms and conditions of the main body of this CONTRACT.

(c) Repair and Maintenance Reserve

No Repair and Maintenance Reserve is included in this CONTRACT.

SEC. 11. FEES

(a) Franchise Fee

(1) For the term of this CONTRACT, the Concessioner shall pay to the Director for the privileges granted under this CONTRACT a franchise fee equal to Zero percent (0 %) of the Concessioner's gross receipts for the preceding year or portion of a year.

SEC. 12. INDEMNIFICATION AND INSURANCE

(a) Indemnification

The Concessioner agrees to assume liability for and does hereby agree to save, hold harmless, protect, defend and indemnify the United States of America, its agents and employees from and against any and all liabilities, obligations, losses, damages or judgments (including without limitation penalties and fines), claims, actions, suits, costs and expenses (including without limitation attorneys fees and experts' fees) of any kind and nature whatsoever on account of fire or other peril, bodily injury, death or property damage, or claims for bodily injury, death or property damage of any nature whatsoever, and by whomsoever made, in any way connected with or arising out of the activities of the Concessioner, its employees, agents or contractors under this CONTRACT. This indemnification shall survive the termination or expiration of this CONTRACT.

(b) Insurance in General

(1) The Concessioner shall obtain and maintain during the entire term of this CONTRACT at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of this CONTRACT as determined by the Director. The initial insurance

1 requirements are set forth below and in Exhibit I. Any changed or additional requirements that
2 the Director determines necessary must be reasonable and consistent with the types and coverage
3 amounts of insurance a prudent businessperson would purchase in similar circumstances. The
4 Director shall approve the types and amounts of insurance coverage purchased by the
5 Concessioner.

6
7 (2) The Director will not be responsible for any omissions or inadequacies of insurance
8 coverages and amounts in the event the insurance purchased by the Concessioner proves to be
9 inadequate or otherwise insufficient for any reason whatsoever.

10
11 (3) At the request of the Director, the Concessioner shall at the time insurance is first purchased
12 and annually thereafter, provide the Director with a Certificate of Insurance that accurately
13 details the conditions of the policy as evidence of compliance with this section. The
14 Concessioner shall provide the Director immediate written notice of any material change in the
15 Concessioner's insurance program hereunder, including without limitation, cancellation of any
16 required insurance coverages.

17
18 **(c) Commercial Public Liability**

19
20 (1) The Concessioner shall provide commercial general liability insurance against claims arising
21 out of or resulting from the acts or omissions of the Concessioner or its employees, agents or
22 contractors, in carrying out the activities and operations required and/or authorized under this
23 CONTRACT.

24
25 (2) This insurance shall be in the amount commensurate with the degree of risk and the scope
26 and size of the activities required and/or authorized under this CONTRACT, as more specifically
27 set forth in Exhibit I. Furthermore, the commercial general liability package shall provide no
28 less than the coverages and limits described in Exhibit I.

29
30 (3) All liability policies shall specify that the insurance company shall have no right of
31 subrogation against the United States of America and shall provide that the United States of
32 America is named an additional insured.

33
34 (4) From time to time, as conditions in the insurance industry warrant, the Director may modify
35 Exhibit I to revise the minimum required limits or to require additional types of insurance,
36 provided that any additional requirements must be reasonable and consistent with the types of
37 insurance a prudent businessperson would purchase in similar circumstances.

38
39 **(d) Property Insurance**

40
41 (1) In the event of damage or destruction, the Concessioner will repair or replace those
42 Concession Facilities and personal property utilized by the Concessioner in the performance of
43 the Concessioner's obligations under this CONTRACT.

44
45 (2) For this purpose, the Concessioner shall provide fire and extended insurance coverage on
46 Concession Facilities for all or part of their replacement cost as specified in Exhibit I in amounts

no less than the Director may require during the term of the CONTRACT. The minimum values currently in effect are set forth in Exhibit I.

(3) Commercial property insurance shall provide for the Concessioner and the United States of America to be named insured as their interests may appear.

(4) In the event of loss, the Concessioner shall use all proceeds of such insurance to repair, rebuild, restore or replace Concession Facilities and/or personal property utilized in the Concessioner's operations under this CONTRACT, as directed by the Director. Policies may not contain provisions limiting insurance proceeds to in situ replacement. The lien provision of Section 13 shall apply to such insurance proceeds. The Concessioner shall not be relieved of its obligations under subsection (d)(1) because insurance proceeds are not sufficient to repair or replace damaged or destroyed property.

(5) Insurance policies that cover Concession Facilities shall contain a loss payable clause approved by the Director which requires insurance proceeds to be paid directly to the Concessioner without requiring endorsement by the United States. The use of insurance proceeds for repair or replacement of Concession Facilities will not alter their character as properties of the United States and, notwithstanding any provision of this CONTRACT to the contrary, the Concessioner shall gain no ownership, Leasehold Surrender Interest or other compensable interest as a result of the use of these insurance proceeds.

(6) The commercial property package shall include the coverages and amounts described in Exhibit I.

SEC. 13. BONDS AND LIENS

(a) Bonds

The Director may require the Concessioner to furnish appropriate forms of bonds in amounts reasonable in the circumstances and acceptable to the Director, in order to ensure faithful performance of the Concessioner's obligations under this CONTRACT.

(b) Lien

As additional security for the faithful performance by the Concessioner of its obligations under this CONTRACT, and the payment to the Government of all damages or claims that may result from the Concessioner's failure to observe any such obligations, the Government shall have at all times the first lien on all assets of the Concessioner within the Area, including, but not limited to, all personal property of the Concessioner used in performance of the CONTRACT hereunder within the Area and any Leasehold Surrender Interest of the Concessioner.

SEC. 14. ACCOUNTING RECORDS AND REPORTS

(a) Accounting System

(1) The Concessioner shall maintain an accounting system under which its accounts can be readily identified with its system of account classification. Such accounting system shall be capable of providing the information required by this CONTRACT, including but not limited to the Concessioner's repair and maintenance obligations. The Concessioner's system of accounts classification shall be directly related to the Concessioner Annual Financial Report Form issued by the Director.

(2) If the Concessioner's annual gross receipts are \$250,000 or more, the Concessioner must use the accrual accounting method.

(3) In computing net profits for any purposes of this CONTRACT, the Concessioner shall keep its accounts in such manner that there can be no diversion or concealment of profits or expenses in the operations authorized under this CONTRACT by means of arrangements for the procurement of equipment, merchandise, supplies or services from sources controlled by or under common ownership with the Concessioner or by any other device.

(b) Annual Financial Report

(1) The Concessioner shall submit annually as soon as possible but not later than one hundred twenty (120) days after the last day of its fiscal year a financial statement for the preceding fiscal year or portion of a year as prescribed by the Director ("Concessioner Annual Financial Report").

(2) If the annual gross receipts of the Concessioner are in excess of \$1,000,000, the financial statements shall be audited by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(3) If annual gross receipts are between \$250,000, and \$1,000,000, the financial statements shall be reviewed by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(4) If annual gross receipts are less than \$250,000, the financial statements may be prepared without involvement by an independent Certified Public Accountant, unless otherwise directed by the Director.

(c) Other Financial Reports

(1) Balance Sheet. Within ninety (90) days of the execution of this CONTRACT or its effective date, whichever is later, the Concessioner shall submit to the Director a balance sheet as of the beginning date of the term of this CONTRACT. The balance sheet shall be audited or

1 reviewed, as determined by the annual gross receipts, by an independent Certified Public
2 Accountant. The balance sheet shall be accompanied by a schedule that identifies and
3 provides details for all capital improvements in which the Concessioner claims a Leasehold
4 Surrender Interest. The schedule must describe these capital improvements in detail showing
5 for each such capital improvement the date acquired, constructed or installed

- 6
7 (2) Statements of Reserve Activity. No Repair and Maintenance Reserve is included in this
8 CONTRACT.
9

10 **SEC. 15. OTHER REPORTING REQUIREMENTS**

11
12 The following describes certain other reports required under this CONTRACT:
13

14 **(a) Insurance Certification**

15
16 As specified in Section 12, the Concessioner shall, at the request of the Director, provide the
17 Director with a Certificate of Insurance for all insurance coverages related to its operations under
18 this CONTRACT. The Concessioner shall give the Director immediate written notice of any
19 material change in its insurance program, including without limitation, any cancellation of
20 required insurance coverages.
21

22 **(b) Environmental Reporting**

23
24 The Concessioner shall submit environmental reports as specified in Section 6 of this
25 CONTRACT, and as otherwise required by the Director under the terms of this CONTRACT.
26

27 **(c) Miscellaneous Reports and Data**

28
29 The Director from time to time may require the Concessioner to submit other reports and data
30 regarding its performance under the CONTRACT or otherwise, including, but not limited to,
31 operational information.
32

33 **SEC. 16. SUSPENSION, TERMINATION, OR EXPIRATION**

34 **(a) Suspension**

35
36 The Director may temporarily suspend operations under this CONTRACT in whole or in part in
37 order to protect Area visitors or to protect, conserve and preserve Area resources. No
38 compensation of any nature shall be due the Concessioner by the Director in the event of a
39 suspension of operations, including, but not limited to, compensation for losses based on lost
40 income, profit, or the necessity to make expenditures as a result of the suspension.
41
42
43
44
45
46

(b) Termination

(1) The Director may terminate this CONTRACT at any time in order to protect Area visitors, protect, conserve, and preserve Area resources, or to limit visitor services in the Area to those that continue to be necessary and appropriate.

(2) The Director may terminate this CONTRACT for the convenience of the government in the event of termination or cancellation of the Business Site Lease or in the event that the Concessioner ceases to be the Lessee under the parallel Business Site Lease.

(3) The Director may terminate this CONTRACT if the Director determines that the Concessioner has materially breached any requirement of this CONTRACT, including, but not limited to, the requirement to maintain and operate visitor services to the satisfaction of the Director, the requirement to provide only those visitor services required or authorized by the Director pursuant to this CONTRACT, the requirement to pay the established franchise fee, the requirement to prepare and comply with an Environmental Management Program, the requirement to duly expend funds from the repair and maintenance reserve and the requirement to comply with Applicable Laws.

(4) In the event of a breach of the CONTRACT, the Director will provide the Concessioner an opportunity to cure by providing written notice to the Concessioner of the breach. In the event of a monetary breach, the Director will give the Concessioner a fifteen (15) day period to cure the breach. If the breach is not cured within that period, then the Director may terminate the CONTRACT for default. In the event of a nonmonetary breach, if the Director considers that the nature of the breach so permits, the Director will give the Concessioner thirty (30) days to cure the breach, or to provide a plan, to the satisfaction of the Director, to cure the breach over a specified period of time. If the breach is not cured within this specified period of time, the Director may terminate the CONTRACT for default. Notwithstanding this provision, repeated breaches (two or more) of the same nature shall be grounds for termination for default without a cure period. In the event of a breach of any nature, the Director may suspend the Concessioner's operations as appropriate in accordance with Section 16(a).

(5) The Director may terminate this CONTRACT upon the filing or the execution of a petition in bankruptcy by or against the Concessioner, a petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, an assignment by the Concessioner for the benefit of creditors, a petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this CONTRACT or any part thereof upon execution, attachment or other process of law or equity. The Director may terminate this CONTRACT if the Director determines that the Concessioner is unable to perform the terms of CONTRACT due to bankruptcy or insolvency.

(6) Termination of this CONTRACT for any reason shall be by written notice to the Concessioner.

(c) Notice of Bankruptcy or Insolvency

1 The Concessioner must give the Director immediate notice (within five (5) days) after the filing
2 of any petition in bankruptcy, filing any petition seeking relief of the same or different kind
3 under any provision of the Bankruptcy Act or its successor, or making any assignment for the
4 benefit of creditors. The Concessioner must also give the Director immediate notice of any
5 petition or other proceeding against the Concessioner for the appointment of a trustee, receiver,
6 or liquidator, or, the taking by any person or entity of the rights granted by this CONTRACT or
7 any part thereof upon execution, attachment or other process of law or equity. For purposes of
8 the bankruptcy statutes, NPS considers that this CONTRACT is not a lease but an executory
9 contract exempt from inclusion in assets of Concessioner pursuant to 11 U.S.C. 365.
10

11
12 **(d) Requirements in the Event of Termination or Expiration**

13
14 (1) In the event of termination of this CONTRACT for any reason or expiration of this
15 CONTRACT, the total compensation due the Concessioner for such termination or expiration
16 shall be as described in Section 17 of this CONTRACT. No other compensation of any nature
17 shall be due the Concessioner in the event of a termination or expiration of this CONTRACT,
18 including, but not limited to, compensation for losses based on lost income, profit, or the
19 necessity to make expenditures as a result of the termination.

20
21 (2) Upon termination of this CONTRACT for any reason, or upon its expiration, and except as
22 otherwise provided in this section, the Concessioner shall, at the Concessioner's expense,
23 promptly vacate the Area, remove all of the Concessioner's personal property, repair any injury
24 occasioned by installation or removal of such property, and ensure that Concession Facilities are
25 in at least as good condition as they were at the beginning of the term of this CONTRACT,
26 reasonable wear and tear excepted. The removal of such personal property must occur within
27 thirty (30) days after the termination of this CONTRACT for any reason or its expiration (unless
28 the Director in particular circumstances requires immediate removal).

29
30 (3) To avoid interruption of services to the public upon termination of this CONTRACT for any
31 reason, or upon its expiration, the Concessioner, upon the request of the Director, shall consent
32 to the use by another operator of the Concessioner's personal property, excluding inventories if
33 any, not including current or intangible assets, for a period of time not to exceed one (1) year
34 from the date of such termination or expiration. The other operator shall pay the Concessioner
35 an annual fee for use of such property, prorated for the period of use, in the amount of the annual
36 depreciation of such property, plus a return on the book value of such property equal to the prime
37 lending rate, as published by the Federal Reserve System Board of Governors, effective on the
38 date the operator assumes managerial and operational responsibilities. In such circumstances,
39 the method of depreciation applied shall be either straight line depreciation or depreciation as
40 shown on the Concessioner's Federal income tax return, whichever is less. To avoid interruption
41 of services to the public upon termination of this CONTRACT for any reason or its expiration,
42 the Concessioner shall, if requested by the Director, sell its existing inventory to another operator
43 at the purchase price as shown on applicable invoices.
44
45

SEC. 17. COMPENSATION

(a) Just Compensation

The compensation provided by this Section shall constitute full and just compensation to the Concessioner for all losses and claims occasioned by the circumstances described below.

(b) Compensation for CONTRACT expiration or termination

If, for any reason, including CONTRACT expiration or termination, the Concessioner shall cease to be authorized by the Director to conduct operations under this CONTRACT, the Concessioner shall convey to a person designated by the Director (including the Director if appropriate) any Leasehold Surrender Interest it has under the terms of this CONTRACT and the Director shall, subject to the terms and conditions of this CONTRACT, assure that the Concessioner is paid the Leasehold Surrender Interest Value.

(c) Procedures for Establishing the Value of a Leasehold Surrender Interest

At any time during the term of this CONTRACT, the Concessioner shall, when requested by the Director, enter into negotiations with the Director as to the value of the Concessioner's Leasehold Surrender Interest under this CONTRACT. In the event that such negotiations fail to determine an agreed upon value within a reasonable period of time as determined by the Director, the Director or the Concessioner may initiate arbitration proceedings to determine such value upon written request to the other party. Such arbitration proceedings shall be conducted in accordance with the arbitration procedures set forth in Exhibit A. In these circumstances, the Concessioner and the Director shall each select an arbiter. The two arbiters, within thirty (30) days of selection, must agree to the selection of a third arbiter to complete the arbitration panel in accordance with Exhibit A. The arbitration panel shall consider the written submissions and any oral presentations made by the Concessioner and the Director and shall determine the value of the Leasehold Surrender Interest consistent with the terms of this CONTRACT, including without limitation Exhibit A. The arbitration panel shall also provide a means to calculate the change in the value of such Leasehold Surrender Interest as may occur for up to two (2) years from the date of the initial determination. The determination of the arbitration panel shall be binding on the Director and the Concessioner.

(d) Compensation for Personal Property

No compensation is due the Concessioner from the Director or a successor concessioner for the Concessioner's personal property used in operations under this CONTRACT. However, the Director or a successor concessioner may purchase such personal property from the Concessioner subject to mutually agreed upon terms. Personal property not removed from the Area by the Concessioner in accordance with the terms of this CONTRACT shall be considered abandoned property subject to disposition by the Director, at full cost and expense of the Concessioner, in accordance with Applicable Laws. Any cost or expense incurred by the Director as a result of such disposition may be offset from any amounts owed to the Concessioner by the Director to the extent consistent with Applicable Laws.

SEC. 18. ASSIGNMENT, SALE OR ENCUMBRANCE OF INTERESTS

(a) This CONTRACT is subject to the requirements of Applicable Laws, including, without limitation, 36 CFR Part 51, with respect to proposed assignments and encumbrances, as those terms are defined by Applicable Laws. Failure by the Concessioner to comply with Applicable Laws is a material breach of this CONTRACT for which the Director may terminate this CONTRACT for default. The Director shall not be obliged to recognize any right of any person or entity to an interest in this CONTRACT of any nature, including, but not limited to, Leasehold Surrender Interest or operating rights under this CONTRACT, if obtained in violation of Applicable Laws.

(b) The Concessioner shall advise any person(s) or entity proposing to enter into a transaction which may be subject to Applicable Laws, including without limitation, 36 CFR Part 51, of the requirements of Applicable Laws and this CONTRACT.

SEC. 19. GENERAL PROVISIONS

(a) The Director and Comptroller General of the United States, or any of their duly authorized representatives, shall have access to the records of the Concessioner as provided by the terms of Applicable Laws.

(b) All information required to be submitted to the Director by the Concessioner pursuant to this CONTRACT is subject to public release by the Director to the extent provided by Applicable Laws.

(c) Subconcession or other third party agreements, including management agreements, for the provision of visitor services required and/or authorized under this CONTRACT are not permitted.

(d) The Concessioner is not entitled to be awarded or to have negotiating rights to any Federal procurement or service contract by virtue of any provision of this CONTRACT.

(e) Any and all taxes or assessments of any nature that may be lawfully imposed by any State or its political subdivisions upon the property or business of the Concessioner shall be paid promptly by the Concessioner.

(f) No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this CONTRACT or to any benefit that may arise from this CONTRACT but this restriction shall not be construed to extend to this CONTRACT if made with a corporation or company for its general benefit.

(g) This CONTRACT is subject to the provisions of 43 CFR, Subtitle A, Subpart D, concerning nonprocurement debarment and suspension. The Director may recommend that the

1 Concessioner be debarred or suspended in accordance with the requirements and procedures
2 described in those regulations, as they are effective now or may be revised in the future.

3
4 (h) This CONTRACT contains the sole and entire agreement of the parties. No oral
5 representations of any nature form the basis of or may amend this CONTRACT. This
6 CONTRACT may be extended, renewed or amended only when agreed to in writing by the
7 Director and the Concessioner.

8
9 (i) The Concessioner hereby agrees and acknowledges that nothing in the Quadrilateral
10 Agreement, the Memorandum of Understanding, the Bridge Agreement, this CONCESSION
11 CONTRACT or otherwise gives the Concessioner any legal rights against the Secretary of any
12 nature with respect to the Concessioner's rights, liabilities, and responsibilities regarding the
13 Business Site Lease and/or its activities of any nature on Navajo Nation lands. The Concessioner
14 also hereby acknowledges and agrees that nothing in the Quadrilateral Agreement, the
15 Memorandum of Understanding, the Bridge Agreement, this CONCESSION CONTRACT or
16 otherwise grants the Secretary or subordinates of the Secretary authority to exercise jurisdiction
17 over leases, lands or contracts of the Navajo Nation (except as may be stated expressly by law
18 with respect to the Secretary's trust responsibilities to Indian tribes). The Concessioner hereby
19 waives any rights to file claims or actions of any nature against the Secretary or subordinate of
20 the Secretary based upon or arising out of the Business Site Lease, facts and circumstances
21 concerning the Business Site Lease, the administration of the Business Site Lease under the
22 Bridge Agreement or otherwise, or the Concessioner's activities on Navajo Nation lands pursuant
23 to the Business Site Lease or otherwise. The Concessioner acknowledges and agrees that the
24 Concessioner is not a third party beneficiary of the Bridge Agreement nor does the Bridge
25 Agreement in any manner provide the Concessioner with any legal rights or liabilities beyond
26 those expressly set forth in this CONCESSION CONTRACT. The Concessioner shall save and
27 hold harmless the United States with respect to any claim or cause of action against the United
28 States or the Secretary arising from or related to the Concessioner's activities as a Lessee to the
29 Navajo Nation.

30
31 (j) This CONTRACT does not grant rights or benefits of any nature to any third party.

32
33 (k) The invalidity of a specific provision of this CONTRACT shall not affect the validity of the
34 remaining provisions of this CONTRACT.

35
36 (l) Waiver by the Director or the Concessioner of any breach of any of the terms of this
37 CONTRACT by the other party shall not be deemed to be a waiver or elimination of such term,
38 nor of any subsequent breach of the same type, nor of any other term of the CONTRACT. The
39 subsequent acceptance of any payment of money or other performance required by this
40 CONTRACT shall not be deemed to be a waiver of any preceding breach of any term of the
41 CONTRACT.

42
43 (m) Claims against the Director (to the extent subject to 28 U.S.C. 2514) arising from this
44 CONTRACT shall be forfeited to the Director by any person who corruptly practices or
45 attempts to practice any fraud against the United States in the proof, statement,
46 establishment, or allowance thereof within the meaning of 28 U.S.C. 2514.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed
this CONTRACT as of the 21ST day of JANUARY, 2003.

CONCESSIONER

BY [Signature]
David Maule-ffinch, Manager of Pensus Group, LLC,
the Manager of Antelope Point Holdings, L.L.C.,
an Arizona limited liability company
4935 E. Valley Vista Lane
Paradise Valley, Arizona 85253
(602) 230-9000

UNITED STATES OF AMERICA

BY [Signature]
Director
National Park Service

WITNESS:

NAME: [Signature]
Linda S. King
ADDRESS: Sacks Tierney, PA
7047 E. Greenway Pkwy, Suite 150
Scottsdale, Arizona 85254

TITLE: Secretary to Judith M. Dworkin, Attorney

EXHIBIT A
LEASEHOLD SURRENDER INTEREST

This Exhibit A to this CONTRACT establishes certain terms and conditions of the CONTRACT regarding the nature, scope and applicable conditions of leasehold surrender interest. In event of any inconsistency between this Exhibit A and Exhibit F of this CONTRACT this Exhibit A shall prevail.

Section 1. Definitions.

"Arbitration" means binding arbitration conducted by an arbitration panel. All arbitration proceedings conducted under the authority of this Exhibit A will utilize the following procedures unless otherwise agreed by the Concessioner and the Director. One member of the arbitration panel will be selected by the Concessioner, one member will be selected by the Director, and the third (neutral) member will be selected by the two party-appointed members. The neutral arbiter must be a licensed real estate appraiser. The expenses of the neutral arbiter and other associated common costs of the arbitration will be borne equally by the Concessioner and the Director. The arbitration panel will adopt procedures that treat each party equally, give each party the opportunity to be heard, and give each party a fair opportunity to present its case. Determinations must be made by a majority of the members of the panel and will be binding on the Concessioner and the Director.

A "capital improvement" is a structure, fixture, or non-removable equipment provided by the Concessioner pursuant to the terms of this CONTRACT and located on lands of the United States within the area. A capital improvement does not include any interest in land. Additionally, a capital improvement does not include any interest in personal property of any kind including, but not limited to, vehicles, boats, barges, trailers, or other objects, regardless of size, unless an item of personal property becomes a fixture as defined in this Exhibit A.

"Construction cost" of a capital improvement means the total of the incurred eligible direct and indirect costs necessary for constructing or installing the capital improvement that are capitalized by the concessioner in accordance with Generally Accepted Accounting Principals (GAAP).

"Consumer Price Index" means the national "Consumer Price Index--All Urban Consumers" published by the Department of Labor. If this index ceases to be published, the Director will designate another regularly published cost-of-living index approximating the national Consumer Price Index.

"Depreciation" means the loss of value in a capital improvement as evidenced by the condition and prospective serviceability of the capital improvement in comparison with a new unit of like kind.

"Eligible direct costs" means the sum of all incurred capitalized costs (in amounts no higher than those prevailing in the locality of the project), that are necessary both for the construction of a capital improvement and are typically elements of a construction contract. Eligible direct costs may include, without limitation, the costs of (if capitalized in accordance with GAAP and in amounts no higher than those prevailing in the locality of the project): building permits; materials, products and equipment used in construction; labor used in construction; security during construction; contractor's shack and temporary fencing; material storage facilities; power line installation and utility costs during construction; performance bonds; and contractor's (and subcontractor's) profit and overhead

(including job supervision, worker's compensation insurance and fire, liability, and unemployment insurance).

"Eligible indirect costs" means, except as provided in the last sentence of this definition, the sum of all other incurred capitalized costs (in amounts no higher than those prevailing in the locality of the project) necessary for the construction of a capital improvement. Eligible indirect costs may include, without limitation, the costs of (if capitalized in accordance with GAAP and in amounts no higher than those prevailing in the locality of the project): architectural and engineering fees for plans, plan checks; surveys to establish building lines and grades; environmental studies; if the project is financed, the points, fees or service charges and interest on construction loans; all risk insurance expenses and ad valorem taxes during construction. The actual capitalized administrative expenses (in amounts no higher than those prevailing in the locality of the project did) of the Concessioner for direct, on-site construction inspection are eligible indirect costs. Other administrative expenses of the Concessioner are not eligible indirect costs.

"Fixtures and non-removable equipment" are manufactured items of personal property of independent form and utility necessary for the basic functioning of a structure that are affixed to and considered to be part of the structure such that title is with the Director as real property once installed. Fixtures and non-removable equipment do not include building materials (e.g., wallboard, flooring, concrete, cinder blocks, steel beams, studs, window frames, windows, rafters, roofing, framing, siding, lumber, insulation, wallpaper, paint, etc.). Because of their special circumstances, floating docks (but not other types of floating property) that may be constructed by the Concessioner pursuant to the terms of this CONTRACT are considered to be non-removable equipment for leasehold surrender interest purposes only. Except as otherwise indicated in Exhibit A, the term "fixture" includes the term "non-removable equipment."

"Leasehold surrender interest" solely means a right to payment in accordance with this CONTRACT for related capital improvements that the Concessioner makes or provides within the area on lands owned by the United States pursuant to the terms and conditions of this CONTRACT. The existence of a leasehold surrender interest does not give the Concessioner, or any other person, any right to conduct business in a park area, to utilize the related capital improvements, or to prevent the Director or another person from utilizing the related capital improvements. The existence of a leasehold surrender interest does not include any interest in the land on which the related capital improvements are located.

"Leasehold surrender interest value" means the amount of compensation the Concessioner is entitled to be paid for a leasehold surrender interest in capital improvements in accordance with this CONTRACT. The leasehold surrender interest value in existing capital improvements under the terms of this CONTRACT is an amount equal to:

- (1) The initial construction cost of the related capital improvement;
- (2) Adjusted by (increased or decreased) the same percentage increase or decrease as the percentage increase or decrease in the Consumer Price Index from the date the Director approves the substantial completion of the construction of the related capital improvement to the date of payment of the leasehold surrender interest value;
- (3) Less depreciation of the related capital improvement on the basis of its condition as of the date of termination or expiration of this CONTRACT, or, if applicable, the date on which the

Concessioner ceases to utilize a related capital improvement (e.g., where the related capital improvement is taken out of service by the Director pursuant to the terms of this CONTRACT).

“Major rehabilitation” means a planned, comprehensive rehabilitation of an existing structure that:

- (1) The Director approves in advance and determines is completed within 18 months from start of the rehabilitation work (unless a longer period of time is approved by the Director in special circumstances); and
- (2) The construction cost of which exceeds fifty percent of the pre-rehabilitation value of the structure.

“Pre-rehabilitation value” of an existing structure means the replacement cost of the structure less depreciation.

“Real property improvements” means real property other than land, including, but not limited to, capital improvements.

“Related capital improvement” or “related fixture” means a capital improvement in which the Concessioner has a leasehold surrender interest.

“Replacement cost” means the estimated cost to reconstruct, at current prices, an existing structure with utility equivalent to the existing structure, using modern materials and current standards, design and layout.

“Structure” means a building, dock, or similar edifice affixed to the land so as to be part of the real estate. A structure may include both constructed infrastructure (e.g., water, power and sewer lines) and constructed site improvements (e.g., paved roads, retaining walls, sidewalks, paved driveways, paved parking areas) that are permanently affixed to the land so as to be part of the real estate and that are in direct support of the use of a building, dock, or similar edifice. Landscaping that is integral to the construction of a structure is considered as part of a structure. Interior furnishings that are not fixtures are not part of a structure.

“Substantial completion of a capital improvement” means the condition of a capital improvement construction project when the project is substantially complete and ready for use and/or occupancy.

Section 2. Obtaining a leasehold surrender interest.

The Concessioner will obtain leasehold surrender interest in capital improvements constructed in accordance with the terms and conditions of this CONTRACT, including, without limitation, the terms and conditions of this Exhibit A to the CONTRACT.

Section 3. Authorizing the construction of a capital improvement.

The Director may only authorize or require the Concessioner to construct capital improvements on area lands in accordance with the terms and conditions of this CONTRACT and for the conduct by the Concessioner of visitor services, including, without limitation, the construction of capital improvements necessary for the conduct of visitor services.

Section 4. Requirements for beginning to construct a capital improvement.

Before beginning to construct any capital improvement, the Concessioner must obtain written approval from the Director in accordance with the terms of this CONTRACT, including the terms and conditions of this Exhibit A and Exhibit F. The request for approval must include appropriate plans and specifications for the capital improvement and any other information that the Director may specify. The request must also include an estimate of the total construction cost of the capital improvement. The estimate of the total construction cost must specify all elements of the cost in such detail as is necessary to permit the Director to determine that they are elements of construction cost as defined in this Exhibit. (The approval requirements of this and other sections of this CONTRACT also apply to any change orders to a capital improvement project and to any additions to a structure or replacement of fixtures as described in this CONTRACT.)

Section 5. Requirements after substantial completion of a capital improvement.

Upon substantial completion of the construction of a capital improvement in which the Concessioner is to obtain a leasehold surrender interest, the Concessioner must provide the Director a detailed construction report in accordance with the terms and conditions of this CONTRACT, including without limitation Exhibit A and Exhibit F. The construction report must be supported by actual invoices of the capital improvement's construction cost together with, if requested by the Director, a written certification from a certified public accountant. The construction report must document, and any requested certification by the certified public accountant must certify, that all components of the construction cost were incurred and capitalized by the Concessioner in accordance with GAAP, and that all components are eligible direct or indirect construction costs as defined in this Exhibit. Invoices for additional construction costs of elements of the project that were not completed as of the date of substantial completion may subsequently be submitted to the Director for inclusion in the project's construction cost.

Section 6. Determining construction cost for purposes of leasehold surrender interest value.

After receiving the detailed construction report (and certification, if requested), from the Concessioner, the Director will review the report, certification and other information as appropriate to determine that the reported construction cost is consistent with the construction cost approved by the Director in advance of the construction and that all costs included in the construction cost are eligible direct or indirect costs as defined in this Exhibit A. The construction cost determined by the Director will be the construction cost for purposes of the leasehold surrender interest value in the related capital improvement unless the Concessioner requests arbitration of the construction cost under Section 7 of this Exhibit A. The Director may at any time amend a construction cost determination (subject to arbitration under Section 7 of this Exhibit A) if the Director determines that it was based on false, misleading or incomplete information.

Section 7. Arbitrating the construction cost of a capital improvement.

If the Concessioner requests arbitration of the construction cost of a capital improvement determined by the Director, the request must be made in writing to the Director within 3 months of the date of the Director's determination of construction cost under Section 6 of this Exhibit A. If a timely request is not made, the Director's determination of construction cost under Section 6 shall be the final determination of the construction cost. The arbitration procedures are described in Section 1 of

this Exhibit A. The decision of the arbitration panel as to the construction cost of the capital improvement will be binding on the concessioner and the Director.

Section 8. Actions the Concessioner may or must take regarding leasehold surrender interest.

The Concessioner:

- (a) May encumber a leasehold surrender interest in accordance with the terms of this CONTRACT;
- (b) Where applicable, must transfer its leasehold surrender interest in connection with any assignment, termination or expiration of this CONTRACT; and
- (c) May waive or relinquish a leasehold surrender interest.

Section 9. Extinguishment of a leasehold surrender interest.

A leasehold surrender interest may not be extinguished by the expiration or termination of this CONTRACT and a leasehold surrender interest may not be taken for public use except on payment of just compensation. Payment of leasehold surrender interest value pursuant to the terms of this CONTRACT will constitute the payment of just compensation for leasehold surrender interest within the meaning of this CONTRACT and for all other purposes.

Section 10. Leasehold surrender interest under a new concession contract.

If the Concessioner under this CONTRACT is awarded a new concession contract by the Director, and the new concession contract continues a leasehold surrender interest in related capital improvements, then the Concessioner's leasehold surrender interest value (established as of the date of expiration or termination of this CONTRACT) in the related capital improvements will be continued as the initial value of the Concessioner's leasehold surrender interest under the terms of the new concession contract.

Section 11. Payment for leasehold surrender interest if the Concessioner is not awarded a new concession contract.

(a) If the Concessioner is not awarded a new concession contract after expiration or termination of this CONTRACT, or, the Concessioner, prior to such termination or expiration, ceases to utilize under the terms of this CONTRACT capital improvements in which the Concessioner has a leasehold surrender interest, the Concessioner will be entitled to be paid its leasehold surrender interest value in the related capital improvements. The leasehold surrender interest will not be transferred until payment of the leasehold surrender interest value. The date for payment of the leasehold surrender interest value, except in special circumstances beyond the Director's control, will be the date of expiration or termination of this CONTRACT, or the date the Concessioner ceases to utilize related capital improvements under the terms of this CONTRACT. Depreciation of the related capital improvements will be established as of the date of expiration or termination of this CONTRACT, or, if applicable, the date the Concessioner ceases to utilize the capital improvements under the terms this CONTRACT.

(b) In the event that extraordinary circumstances beyond the control of the Director prevent the Director from making the leasehold surrender interest value payment as of the date of expiration or

termination of this CONTRACT, or, as of the date the Concessioner ceases to utilize related capital improvements under the terms of this CONTRACT, the payment when made will include interest on the amount that was due on the date of expiration or termination of this CONTRACT or cessation of use for the period after the payment was due until payment is made (in addition to the inclusion of a continuing Consumer Price Index adjustment until the date payment is made). The rate of interest will be the applicable rate of interest established by law for overdue obligations of the United States. The payment for a leasehold surrender interest value will be made within one year after the expiration or termination of this CONTRACT or the cessation of use of related capital improvements under the terms of this CONTRACT.

Section 12. Process for determining leasehold surrender interest value.

In the event that the Concessioner and the Director cannot reach agreement as to a leasehold surrender interest value where required by the terms of this CONTRACT, the leasehold surrender interest value will be determined by arbitration upon request of the Director or the Concessioner. The arbitration procedures are described in Section 1. A prior decision as to the construction cost of capital improvements made by the Director or by an arbitration panel in accordance with this Exhibit A are final and not subject to further arbitration.

Section 13. Payment of leasehold surrender interest by a new concessioner.

A new concession contract awarded to a new concessioner will require the new concessioner to pay the Concessioner its leasehold surrender interest value in existing capital improvements as determined under Section 12.

Section 14. Obtaining additional leasehold surrender interest by undertaking a major rehabilitation or adding to a structure in which the concessioner has a leasehold surrender interest.

If the Concessioner, with the written approval of the Director, undertakes a major rehabilitation or adds a new structure (e.g., a new wing to an existing building or an extension of an existing sidewalk) to an existing structure in which the Concessioner has a leasehold surrender interest, the Concessioner will increase its leasehold surrender interest in the related structure, effective as of the date of substantial completion of the major rehabilitation or new structure, by the construction cost of the major rehabilitation or new structure. The Consumer Price Index adjustment for leasehold surrender interest value purposes will apply to the construction cost as of the date of substantial completion of the major rehabilitation or new structure. Approvals for major rehabilitations and additions to structures are subject to the same requirements and conditions applicable to new construction as described in this CONTRACT.

Section 15. Obtaining additional leasehold surrender interest by replacing a fixture in which the Concessioner has a leasehold surrender interest.

If the Concessioner replaces an existing fixture in which the Concessioner has a leasehold surrender interest with a new fixture, the Concessioner will increase its leasehold surrender interest by the amount of the construction cost of the replacement fixture less the construction cost of the replaced fixture.

Section 16. Obtaining a leasehold surrender interest in existing real property improvements in which no leasehold surrender interest exists.

(a) If the main body of this CONTRACT requires the Concessioner to replace fixtures in real property improvements in which there is no leasehold surrender interest (e.g., fixtures attached to an existing government facility assigned by the Director to the Concessioner), a leasehold surrender interest will be obtained by the Concessioner in such replacement fixtures subject to the approval and determination of construction cost and other conditions contained in CONTRACT.

(b) If the main body of this CONTRACT requires the Concessioner to undertake a major rehabilitation of a structure in which there is no leasehold surrender interest (e.g., a government-constructed facility assigned to the Concessioner), upon substantial completion of the major rehabilitation, the Concessioner will obtain a leasehold surrender interest in the structure. The initial construction cost of this leasehold surrender interest will be the construction cost of the major rehabilitation. Depreciation for purposes of leasehold surrender interest value will apply only to the rehabilitated components of the related structure.

Section 17. No leasehold surrender interest results from repair and maintenance of real property improvements.

The Concessioner will not obtain initial or increased leasehold surrender interest as a result of repair and maintenance of real property improvements unless a repair and maintenance project is a major rehabilitation.

EXHIBIT B
DRAFT OPERATING PLAN
Marina and Land Based Accommodations, Facilities and Services

Introduction

This Operating Plan between Antelope Point Holdings, L.L.C. an Arizona limited liability company hereinafter referred to as the "Concessioner") and Glen Canyon National Recreation Area (hereinafter referred to as the "Service") shall serve as a supplement to Concession Contract CC-GLCA007-03 (hereinafter referred to as the "CONTRACT"). It describes specific operating responsibilities of the Concessioner and the Service with regard to those lands and facilities within Glen Canyon NRA, which are assigned to the Concessioner for the purposes authorized by the CONTRACT.

In the event of any conflict between the terms of the CONTRACT and this Operating Plan, the terms of the CONTRACT, including its designations and amendments, shall prevail.

This plan shall remain in effect until superceded or amended. It will be reviewed annually by the Superintendent and revised as determined necessary by the Superintendent of Glen Canyon NRA.

Any revisions shall not be inconsistent with the main body of this CONTRACT. Any revisions must be reasonable and in furtherance of the purposes of the CONTRACT.

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I. MANAGEMENT, ORGANIZATION AND RESPONSIBILITIES

A. Concessioner

The Concessioner is responsible for complying with the applicable Federal, State of Arizona, and county laws, policies and directives of the Service, and for carrying out day-to-day operations under the direction of the on-site manager. The on-site manager provides professional direction, supervision of all on-site supervisors and employees, and handling of complaints and other correspondence promptly and efficiently. To achieve an effective and efficient working relationship between the Concessioner and the Service, the Concessioner shall designate an on-site manager who has full authority to act upon behalf of the Concessioner, including acting as the liaison between the Concessioner and the Service. The on-site manager will furnish the Service with a listing of departmental or key supervisors and managers, including the position titles, and will update the listing as vacancies occur and positions are filled.

B. Service

The Superintendent is the Manager with responsibility for total Recreation Area operations, which includes the Concessioner's operation. The Superintendent, as a Senior Representative representing the Department of Interior, has the responsibility to carry out the policies and directives of the Service including Concession Contract administration of the Concessioner. Through staff representatives, the Superintendent reviews, supervises, and coordinates concession activities within Glen Canyon National Recreation Area, including monitoring Concession Contract compliance which includes evaluating all concession operations and services, and reviewing and authorizing all rates, improvements to facilities, and construction.

1. The Chief of Concessions Management is responsible for supervising the concession management activities within the park.

The Concessions Management Division coordinates the functions of other Service divisions relating to Concession operations. The Chief makes recommendations on all aspects of the Concessioner's operation to the Superintendent. He/she ensures that necessary evaluations and inspections are performed, including those required by the United States Public Health Service (USPHS), Park Safety Officer (including fire inspections), along with periodic evaluations required under the NPS Concessioner Review Program. The Chief ensures all Concessioner rates are approved based upon current comparability studies or applicable guidelines. He/she has

authority from the Superintendent to make field decisions pertaining to the Concessioner's operation, has the lead park responsibility to insure that the Concessioner's capital expenditures are appropriate and limited to the accomplishment of approved projects, and acts as liaison between the Concessioner and Superintendent.

Concessions Management Specialist(s) review and coordinate the Concessioner's day-to-day activities; operational and maintenance activities; rate, service, and schedule changes; equal employment opportunity and affirmative action plans; advertisements; Annual Construction and Repair and Maintenance Management Plan; annual financial reports; insurance coverage; and any other Contract requirements.

2. The Park Safety Officer monitors the Concessioner's Risk Management program to ensure it meets all applicable standards.
3. The Public Health Service Sanitarian monitors food and beverage services, grocery stores, solid waste disposal, water, and waste water systems to ensure adherence to all applicable public health standards.
4. The Chief of Resource and Visitor Protection initiates, reviews, supervises, and coordinates the activities of personnel who provide public safety (law enforcement, fire, emergency medical and physical security) functions and communications (Dispatch) center and Fee program. District and Subdistrict Rangers, the Fire Management Officer, and the Chief Law Enforcement Specialist serve as the direct line of communication to the Concessioner on matters related to fire management, law enforcement, public safety, prescribed fire, search and rescue, emergency medical services, lost and found articles and resource protection. District and Subdistrict Rangers may assist with concession operational evaluations, PHS evaluations and critical item follow-up inspections.
5. The Public Information Officer coordinates media relations and activities directly with the Concessioner.
6. The Chief of Interpretation acts on behalf of the Superintendent in matters pertaining to interpretation, environmental education, and public information. The Interpretive Division will work with the Concessions Management Division to evaluate/monitor concession interpretive activities. This office also prepares the Park's newspaper, the *Glen Canyon Reflections*.

District Interpreters provide interpretive programs for the visiting public and serve as the direct line of communication to the Concessioner about interpretive matters, including concession staff training.

7. The Chief of Facilities Management acts on behalf of the Superintendent in matters pertaining to facility planning, environmental compliance, design and maintenance. The Chief of Facilities Management acts on behalf of the Superintendent in matters pertaining to planning, construction, renovation of buildings and facilities, and in assuring that all construction, both Service and Concessioner, comply with applicable environmental law and regulations, building codes and fire codes. The Chief of Facilities Management, along with the Chief of Concessions Management will be the primary contacts for the Concessioner for any improvements that are made as a result of the Concession Facility Improvement Program, maintenance reserve account requirements and the Annual Construction and Repair and Maintenance Management Plan (CMP). The Facility Managers, District Maintenance Supervisors and their staff provide day-to-day supervision of all maintenance activities and operations, including utilities, in their districts. They serve as the direct line of communications to the Concessioner on routine maintenance matters.
8. The Chief of Resources Management acts on behalf of the Superintendent in all matters pertaining to natural and cultural resources management such as air quality monitoring, water quality, aquatic recreation and ecology and hydrology, archeological management, vegetation management, fish and wildlife management, and hazard tree mitigation, visitor experience and socio-economic issues.
9. The Administrative Officer acts on behalf of the Superintendent in matters related to fiscal management associated with the concession activities, including billing for payment of franchise fees, utilities, lease fees, quarters rental, and personal services provided by the Service to the Concessioner.

II. CONCESSION OPERATIONS (Scope and Quality of Services)

The operation of accommodations, facilities, and services authorized by the Contract will conform to the evaluation standards set forth in the National Park Service Concessions Guidelines and with this Operating Plan.

A. OPERATIONAL EVALUATIONS

1. The Service and the Concessioner shall separately inspect and monitor concession facilities and services with respect to Service policy, applicable standards, authorized rates, safety, public health, impacts on cultural and natural resources, and visitor concerns and reactions. The Service will evaluate all services and facilities operated by the Concessioner to ensure public safety and health, identify maintenance and operating deficiencies, and ensure satisfactory services and accommodations for the general public within assigned areas of responsibility.
2. The Superintendent's representative(s), normally the Concessions Management Specialists will conduct unannounced periodic inspections of Concessioner facilities and services to ensure conformance to operational standards established by the Service. Location managers will be contacted at the time of evaluations so that a representative of the Concessioner can accompany the Service evaluator.
3. The Park's Safety representative will conduct at least one annual comprehensive safety and occupational health evaluation in addition to the review of the Concessioner's Risk Management Program. The Concessioner will perform periodic interior and exterior safety inspections of all concession facilities, in accordance with its documented safety program ("Risk Management Plan"), discussed in Section VIII below.
4. The Public Health Service Sanitarian shall conduct unannounced periodic food service evaluations of the Concessioner's food and beverage operation. The Concessioner will maintain and follow a formal, written food service sanitation self-inspection program. The Service may help develop and update the program as necessary.
5. The Service is the jurisdiction having authority (JHA) for all fire codes on federal lands administered by the National Park Service. Fire Inspectors will conduct periodic inspections no less than once a year. All violations will be corrected in accordance with the terms of this Contract and within the negotiated time frames determined and agreed to between the Service and the Concessioner. The Concessioner will perform annual interior and exterior fire inspections of all concession buildings. Written records, verifying the completion of such inspections, will be maintained by the Concessioner and available to the Service upon request.
6. The Concessioner must be responsive to dates assigned for correction of deficiencies and abatement plans for correction of identified deficiencies. The Concessioner will meet with Service officials to schedule and prioritize correction of deficiencies and improvement programs resulting from these inspections.

B. RATES

1. The Concessioner will submit written requests for all rate increases at least 45 days prior to anticipated implementation or brochure publication date. Requests for rate changes will be processed as expeditiously as possible. Should special conditions require a quicker than normal response, the Concessioner will clearly explain these conditions in writing in the request. Annual requests for rate changes should be submitted in accordance with the Concessions Management Guideline. Slip and Buoy and executive service customers must have 30-day customer notification prior to changes in rates for services.

2. Such requests shall include pertinent information about the rate, product or service proposed and be fully supported by the established criteria and comparability data. This includes but is not limited to: brand names, portions, length of service, amenities provided, etc. For food service requests, this will include an indication of which items will be regularly on the menu and which will be special or limited runs. When an analysis is conducted, the Concessioner will work with the Service to establish rating criteria and evaluate products, goods and/or services.

3. The Concessioner shall provide a range of service levels, qualities, and associated prices for goods and services provided to the public under the Concession Contract.

4. If the Concessioner offers an item or service at less than the optimum condition (because of unavailable amenities or condiments, or because of poor service or other conditions), the item or service will be discounted. This should not be construed to condone shortages or "running out" of items on a regular basis and should be used only in unavoidable situations.

Boat rental rates will be adjusted seasonally. Deposits, cancellation policies, collision damage waiver, and check processing fees will require approval.

5. The Service will approve, disapprove, or adjust rates and will inform the Concessioner of the reason for any disapproval or adjustment within 45 days of the rate request submittal. If the Concessioner requests a quicker response, the Service will attempt to accommodate this request; however, this will not be normal procedure. If a longer response period is needed, the Service will contact the Concessioner and negotiate a response date. Appeals of rate approval denials will be submitted to the Director, Intermountain Region, National Park Service.

6. The Concessioner will prominently post all rates for goods and services provided to the visiting public. The Superintendent or his/her designated representatives will conduct spot checks for rate compliance throughout the year, as part of "walk-through" inspections, as well as the documented periodic inspections.

7. It is the objective of the Service to ensure that the Concessioner's rates and charges to the public are commensurate with the level of services and facilities provided within the private sector as documented in the formal rate comparability analysis conducted by the Service.

C. REDUCED RATES FOR GOVERNMENT EMPLOYEES AND OTHERS

1. Government employees on official business and others (not family members) on park-related business, as designated by the Superintendent, will receive reduced rates in accordance with approved rates by the General Services Administration for official government travel.. The Concessioner shall provide transportation to or for the government for the conduct of official business at no cost on regularly scheduled trips where paying customers are not displaced, and at operating costs for those trips or transportation services and rental services not on regularly scheduled trips.

A rate schedule for official government use may be developed and updated by the Superintendent on an as needed basis and reflect the actual costs of the concessioner providing accommodations or services to the National Park Service for official business functions such as search and rescue, investigations, official meetings, visits of government officials and representatives for official purposes related to the management of Glen Canyon NRA.. This rate schedule will be managed by the concessioner with the Concessions Division and the Superintendent's office only.

2. Goods and services may not be provided to government employees or their families without charge or at reduced rates except within the provisions described above or as available to the general public. Accordingly to this effect, the Concessioner shall have a standing policy that the Concessioner shall not offer any discount on a product or service, except as identified in Item #1 above, to any Service employee.

D. SEASON AND HOURS OF OPERATION

The Concessioner shall provide the services required and authorized by the Concession Contract on a year-round basis, however, some facilities close seasonally or provide limited services. The Concessioner will submit proposed changes to the established opening and closing dates and operating hours for all concession facilities for the Superintendent's approval prior to implementation. The Service will give reasonable notice of any schedule changes that it may initiate. Weather and visitation may cause specific dates of operating seasons to fluctuate; these dates, however, will be agreed upon and approved by the Service. The **minimum** hours of **all** operations **unless specified** will be 8a.m. through 5p.m. daily and shall remain in effect and be adhered to unless changes are requested in writing and approved by the Superintendent. A schedule of hours for summer season, shoulder seasons and off-season will be agreed upon and incorporated as an attachment to the Operating Plan.

III. SPECIFIC OPERATIONS

1. **BOAT SLIP RENTALS:** Boat slips shall be provided year round, seven days per week. All boat slips shall be identified with a storage identification number.

40' – 75' slips will be offered.

The NPS expects that every boat with a wet storage agreement be in compliance with requirements established by the Concessioner and the NPS regarding storage or operations on Lake Powell. In order to assure this the NPS requires the Concessioner to conduct an annual inspection of each such boat for compliance with those requirements. Prior to the Concessioner entering into a storage agreement with the visitor, the Concessioner shall physically inspect the vessel. The Concessioner shall incorporate Service requirements as required by the Superintendent regarding lake operations, including but not limited to, visitor safety and resource protection. The Concessioner shall also conduct this inspection annually for each vessel with a storage agreement.

The Concessioner shall rent slips for recreational purposes only, on a month-to-month basis.

The Concessioner shall reasonably ensure security of space renter's property and shall be available to respond to problems in the storage area, including unauthorized uses.

It is the policy of the National Park Service that storage slips shall be used for recreational purposes only. To that end, storage space shall not be acquired or held in whole or in part by boat dealers for the purpose of the sale of boats. The Concessioner shall maintain accurate documentation of the owner(s) of each vessel with a storage agreement and shall limit each owner to no more than two (2) wet storage agreements. Subletting of slips is not permitted, and only one boat shall be registered to each slip or buoy in accordance with the approved Wet Storage agreement.

Residency on boats in storage facilities is prohibited. Residency is defined as a continual occupancy by any individual for more than 14 consecutive days or for more than 30 calendar days in any year.

Boat owners are responsible for securing their boats to the slip. The Concessioner is responsible for the condition of each slip, including all cable lines, cleats, connecting eyes and other appurtenances. The Concessioner shall enforce minimum standards for the lines and equipment used to secure the boat to the slip.

Inadequate equipment may be replaced by the Concessioner at the customer's expense when necessary to adequately secure the boat.

2. **BOAT RENTALS:** The Concessioner shall provide a full range of rental houseboats and powerboats year round at the marina, and adequate dock space and facilities to clean, repair, and for customer loading.

The Concessioner shall provide a sewage pump-out station and fresh water supply for all rental boats at the marina. The Concessioner shall evaluate each new technology that becomes available, such as low-noise, fuel injection, 4-stroke etc. The Concessioner shall provide to the Superintendent a written evaluation of the applicability of that technology to its operation. The Superintendent may require the Concessioner, consistent with the CONTRACT, to utilize that technology in its operation.

A reservation system shall be used to book boats. A deposit may be required to hold a houseboat, refundable if written cancellation is received 60 days prior to boarding. A service fee may be charged on houseboat cancellations. The rental of any boat may include insurance in the event of damage to the rental boat by the visitor.

All rental boat customers shall be given hands-on instructions in the operation of the boat and proper use of all equipment, park regulations including but not limited to water quality, "rules of the road", weather, and emergency information.

The Concessioner shall provide these instructions in a manner which is understandable by the rental customer. In addition, written instructions shall be on board each rental boat. All material related to the operation of the boat, water safety, navigation maps, and National Park Service regulations shall be available on all houseboats so that customers can easily refer to it when necessary during their stay. The Concessioner shall secure and maintain in their files a record of the visitor's written affirmation of receiving such operating instructions. All instructional material (videos and printed instructor scripts) shall be approved in advance by the National Park Service. The Concessioner shall be required to provide a slip for each rental vessel in an area that is separate from the maintenance and preparation area, for the loading/unloading of visitors and their equipment.

All rental boats shall comply with applicable Federal and State law, regulation, and policy with regard to the discharge of blackwater (sewage) and greywater into the water or lands within the recreation area. Accordingly, all rental houseboats shall be equipped with sealed greywater and blackwater holding tanks and sewage pumpout systems. Any rental houseboats or retrofitted/upgraded rental

houseboats shall be equipped with sealed greywater holding tanks. All other rental boats utilized overnight shall be equipped with portable sewage holding systems (portable toilet), or shall be accompanied by another vessel equipped with an operable portable sewage system.

All rental boats shall be registered with the State of Arizona, and all rental houseboats shall be easily, individually identifiable as Concessioner rental vessels

All work performed to maintain the rental vessel fleet will be in accordance with all applicable laws, and regulations including the Superintendent's Compendium.

3. MARINA STORE: General: All retail services will comply with the guidelines established by the Service's "Concessioner Review Policy, Operational Performance Standards" and "Handcrafts, Gifts and Merchandise."

Gifts and Souvenirs: The Concessioner shall develop, in conjunction with the National Park Service, a plan that will assure that merchandise reflects the purpose and significance of the AREA for the areas assigned pursuant to the Contract.

In the Area, gift and souvenir sales will conform to the following guidelines:
Souvenirs: the sale of souvenirs shall be limited to those items which promote the mission of the Area, and are appropriate for public use.

Handcrafts: Handcrafts appropriate to the area are especially encouraged.

Boat Accessories and Parts: The Concessioner shall provide a wide range, selection and pricing for boat accessories and parts to meet the needs of the boating public within the Area.

Grocery and Sundry Items: The Concessioner shall provide a wide range, selection, and pricing for grocery and sundry items appropriate for the Area.

The Concessioner shall use and sell environmentally friendly products related to cleaning solvents, etc., and shall maintain a control record for the sale and disposal of automobile/marine batteries.

MARINA VILLAGE FOOD SERVICE: A variety of food and price ranges will be available on a year-round basis. The off-season menu and hours of operation may be scaled back for efficiency purposes. The rates and menu items will be approved in accordance with the approved CORE Menu NPS policy.

MARINA FUEL DOCK: Gasoline, diesel, and pre-mix (OBM) fuels, Outboard

Motor Oil and other lubricants shall be readily available to the boating public. The Concessioner's employees shall be responsible for the proper fueling of all vessels (private and concessioner owned), instructing the boating public who wish to fuel their own vessels on the appropriate safety measures that must be undertaken prior to fueling the vessel, and must directly supervise the fueling of the vessel by the boating public.

Operations shall comply with all applicable Federal, State, and local laws, regulations, and codes as well as the National Fire Prevention Association (NFPA) codes and the Spill Prevention, Control, and Contingency (SPCC) Plan. Spill containment equipment shall be readily available and stored at the fueling facility.

5. **BOAT REPAIR AND MARINA SERVICES:** The Concessioner shall provide staff, shops, equipment, and facilities for year-round maintenance and repairs of boats.

The boat repair staff shall be trained and equipped to repair and maintain outboard, inboard/outboard, and inboard engines and drive units.

Boat repair work shall be performed by a qualified boat repair mechanic. A qualified mechanic is one who has had schooling in the type of work performed, or who can demonstrate work history in the type of work performed. Apprentices may be employed and may perform work if their work is overseen by a qualified mechanic.

Work orders shall be prepared immediately when the customer agrees to have work done. Customers must sign a work order to leave boat for repairs.

Hours of operation, staffing, and equipment shall be sufficient to enable the shop to maximize use of available facilities.

A parts inventory shall be maintained that is sufficient to supply parts needed in 75% of routine repair orders. For repair orders in which parts are not in stock or readily available, the shop shall have the ability to order and receive parts.

On the Water Service: A mechanic shall be available during normal shop hours to make initial assessments of boats at the marina while boats are in the water. Mechanic shall perform any minor repairs as needed.

6. **BOAT TOWING AND CHASEBOAT SERVICES:** The Concessioner shall provide chase boat service for all privately-owned and rental boats on the navigable waters of Lake Powell from Glen Canyon Dam to and including the San Juan Arm of Lake Powell.

Chase boats shall be dispatched during daylight hours upon request, except in severe weather conditions, at which time the Concessioner shall immediately contact the Area's dispatch office. Towing and chase boat calls for services (but not necessarily a tow) shall be received on a year-round, twenty-four hour basis. The number of vessels available at all times with the capability for response to a chase and/or tow may vary. However, the minimum level of acceptable response for assistance will be an unskilled mechanic and chase boat, (with or without towing capability) regardless of the number of vessels in use providing this service.

A sufficient number of boats with towing capability shall be available to meet the anticipated demand based upon visitation and use levels and potential weather activity. The Concessioner shall request the location and identification of the vessel in need. Chase boats shall be underway within a reasonable time of receiving a request, in accordance with approved procedures. The visitor shall be advised of an approximate time of arrival that is within 30 minutes of the chaseboat or towing boat's anticipated arrival, as communication with the visitor is available.

7. BOAT TOURS: The Concessioner will provide interpretive and scenic guided boat tours using U.S. Coast Guard inspected passenger vessels provided by the Concessioner. Tours to Rainbow Bridge National Monument must not exceed the National Park Service established number of trips per day, passenger number requirements, and/or total daily limitations as stated below. The Concessioner must manage its docking activities at Rainbow Bridge National Monument and coordinate all its operations with other authorized concessions operations. All activities, docking, tours, and planned tour groups must be coordinated with other Concessioners authorized visitation to Rainbow Bridge National Monument.

Tour boat passengers, from all concessions operations on Lake Powell, visiting Rainbow Bridge National Monument, at any given time, shall not exceed 150.

The Concessioner shall annually submit a schedule of proposed tours into Rainbow Bridge prior to the start of the tour season. The Superintendent will review the submitted schedules from all concessioners to insure that overall tour limits are not exceeded. Tour operations shall comply with all applicable U.S. Coast Guard, States of Arizona and Utah, and all other regulations as required by the Superintendent.

The Concessioner will provide a sufficient number of trained, courteous U.S. Coast Guard licensed pilots and support staff to meet the operating schedule. Personnel will wear the appropriate uniform and their personal name tag.

The Concessioner will adequately train staff members in safe operating procedures and interpretive techniques and themes. The Concessioner will be evaluated upon thematic interpretation and interpretive techniques. The Concessioner shall provide a minimum of eight (8) hours annual interpretive training for each Boat Tour staff who is in contact with the public. This is in addition to the four (4) hours annual interpretive training provided to all employees. Employees will demonstrate their knowledge of Glen Canyon National Recreation Area, Rainbow Bridge National Monument, and the Navajo Nation goals, resources, history, management concerns, and utilize appropriate interpretive techniques in their presentations. The Service may assist in the interpretive training.

The Concessioner shall maintain a reservation system for boat tours. Tour groups shall not be booked so as to routinely deny bookings to the general public. A deposit of up to one half of the ticket price may be required to reserve space on the tour, but the deposit shall be refunded in full if the customer cancels 24 hours in advance of the scheduled departure.

Tours need not be conducted with fewer than six (6) paying customers. In instances of cancellation for this reason the Concessioner shall refund all monies received. The Concessioner shall maintain a passenger manifest for each tour which shall be kept in the boat tour office.

IV. ADVERTISING

- A. All promotional material, which includes written, audio, video, and/or computer distributed, must be approved by the Superintendent prior to publication, distribution, broadcast, etc. Advertisements must include a statement that the NPS, Department of the Interior authorizes the Concessioner, to serve the public in Glen Canyon National Recreation Area. Brochure changes and layout should be submitted to the Superintendent for review at least 30 days prior to projected need/printing dates. The Superintendent will make every effort to respond to minor changes to brochure and other texts within 15 days. Longer periods may be required for major projects or where NPS assistance is required to help develop the product. The Concessioner should contact park staff well in advance to establish specific time frames for each project.
- B. When used, advertisements for employment must contain a statement that the company is an equal opportunity employer. The advertisement materials shall not include any services located outside of the Antelope Point Project Area.

V. LOST AND FOUND

Each found item shall be tagged, using the standard Service form, listing the item found, where found, when, and by whom. If an item is not claimed within seven (7) days, it shall be turned over to the Service or otherwise mailed or transmitted to the park in accordance with the park's lost and found policy. To the greatest extent possible, the Concessioner shall attempt to identify the owner of found property and return it.

VI. INTEGRATED PEST and WEED MANAGEMENT

The control of pests and weeds by chemical and other means is subject to park approval. Procedures are outlined in the National Park Service Integrated Pest Management Program. Specific problems can be referred to the park's Integrated Pest Management Coordinator.

VII. SAFETY, SANITATION, AND SECURITY

- A. The Concessioner shall comply with the applicable requirements of the Service Loss Control Guidelines, Requirements, and Responsibilities, the Occupational Safety and Health Act, and other Federal, State of Arizona, and local safety codes, status, and standards. The Concessioner shall exercise precautions for the safety of all persons within its facilities at all times.
- B. The Service is responsible for visitor protection, emergencies involving public safety, civil disturbance and violations of regulations or law. Any injury sustained by a visitor or employee in a Concessioner facility and/or all medical emergencies will be immediately reported to the Service. All employee and/or visitor illness complaints will be promptly reported to the Service. Concessioner security personnel are empowered to enforce the Concessioner's employee policies and employee housing regulations. The security personnel, in regards to visitors, may act as private citizens but have not authority to take law enforcement action or to carry firearms.
- C. The Concessioner has primary responsibility to ensure that all buildings assigned to it within the designated area meet National Fire Code regulations and that fire detection and suppression equipment is in good operating condition at all times. It is also its responsibility to direct and report all structural fires immediately. The Concessioner and the Service will enter into a Memorandum of Understanding concerning the necessary training and actions to be taken concerning the Concessioner's employees, including security personnel, with regards to fire protection, security, and other matters.

- D. Concessioner facilities must comply with applicable Federal, State of Arizona, and County laws, regulations, and policies concerning smoking in the public facilities.

VIII. CONCESSION EMPLOYEES AND EMPLOYMENT

- A. The Concessioner shall hire a sufficient number of employees to ensure satisfactory services, and will establish hiring policies, which will include appropriate background reviews of applicants for employment. The Concessioner shall not hire any person known to have an outstanding warrant for arrest and will make reasonable efforts to secure this information prior to hiring any employee.
- B. The Concessioner shall not employ in any status the spouse or minor children of the Superintendent. The Concessioner shall not employ in any status a Service employee, their spouse, or minor children without prior written approval of the Superintendent.
- C. All employees dealing directly with the public shall wear uniforms or standardized clothing and nametags or badges. Employees shall be neat and clean in appearance.
- D. All employees, especially those dealing directly with the public, should receive, in addition to job related training, such training which includes information on Glen Canyon National Recreation Area and Antelope Point history, driving regulations and cautions, things to do and see in the area, and resource protection and pollution prevention. The Concessioner will provide adequate and detailed training to each employee prior to job assignments and will monitor the services, activities and attitudes of each employee in serving the visiting public. Operators of motor vehicles shall have a valid operator license for the size and class of vehicle being operated.
- E. The Concessioner shall maintain, to the greatest extent possible, a drug free workplace environment. The Concessioner shall conduct educational program(s) for its employees to deter substance abuse and alcohol abuse. Those employees who are in safety sensitive positions, such as, but not limited to tourboat vessel captains (or masters) and crew, drivers of delivery trucks, equipment operators, security personnel, passenger carrying transportation or shuttle vehicles, launch and retrieval vehicles, divers and underwater maintenance crews, will be required to participate in drug testing. Illegal drug use, should it occur, must be promptly reported by the Concessioner to the Service.
- F. The Concessioner shall formally inform employees and potential employees that

any individuals required to register with the appropriate law enforcement agency in accordance with Arizona Criminal Code 13-1821 to 13-3826 (sex offenders) must register with the office of the Chief, Resource and Visitor Protection.

- G. Drivers of trucks or passenger carrying vehicles shall have a valid State operator's license for the size and class of vehicle being driven. They shall also meet any additional Arizona Highway Patrol requirements established for the type vehicle driven or number of passengers carried
- H. Training Program
1. The Concessioner will provide employee orientation and training and will inform employees of park regulations and requirements, which affect their employment and activities while residing and working in Glen Canyon National Recreation Area. Additional orientation, pertinent to the developed area where the employees are assigned, will be conducted by the Concessioner with Service participation on location.
 2. The Concessioner will provide appropriate job training to each employee prior to duty assignments and working with the public. The Service will provide orientation(s), emphasizing the operational review program, to managers on an annual basis.
 3. The Concessioner will provide hospitality training for employees who have direct visitor contact and/or who provide visitor information in languages that are appropriate based on visitation data showing.
 4. The Concessioner shall submit to the Service a written plan for its interpretive programs which outline both personal and non-personal programs, a basic description of topics to be covered, bibliography of resource materials used, and the scope of employees training. The Service will evaluate interpretive visitor services to ensure appropriateness, accuracy, and the relationship of interpretive presentations to park themes.
 5. Employee and Community Services: The Concessioner will develop and support employee recreation program. This program will provide facilities for various types of recreation for employees, such as dances, wellness center, sports activities, fitness programs, movies, etc. The Concessioner may make these activities available to other community members.

IX TAXES AND ASSESSMENT

The Concessioner will pay or cause to be paid all taxes and assessments levied or assessed upon the possession, use, or occupancy of the premises. The Concessioner is liable for prompt payment of electrical, gas, refuse collection, telephone, sewage disposal, water or any other utility or service, whether provided by governmental authority, public or community service company.

X. UTILITIES

The concessioner is responsible for contracting with independent suppliers to provide year-round utility services. The Concessioner is responsible for direct payment to these suppliers.

XI. COMPLAINTS

Complaints or comments received by the Service shall be sent to the Concessioner for investigation and response in a timely manner. A copy of the response shall be provided to the Service. The Concessioner shall provide the Service with a copy of its response to all visitor complaints related to its operation.

XVIII. VOLUNTEERS IN THE PARK (VIP)

The Concessioner will allow its employees to participate in the Park's VIP Volunteers in the Park program.

XIII. SMOKING IN PUBLIC BUILDINGS

Concession facilities must comply with Service policy and Department of the Interior guidelines relative to smoking in public buildings in service areas. The Concessioner will post notices in all public buildings as necessary.

XIV. QUIET HOURS

Quiet hours will be enforced between the hours of 10:00 p.m. and 6:00 a.m. in all concession overnight facilities.

XV. REPORTS

The Concessioner shall maintain a management information system on the marina rental slips, houseboat and powerboat rental, and tourboat operations, and shall provide the Superintendent a monthly report which will reflect the following information:

Marina Rental Slips

Number of Rental Slips/Buoys Available
Number of Rental Slips/Buoys Occupied
Number of Reservation Requests on Waiting List

Boat Rental

Number of Houseboats/Powerboats Available
Number of Houseboats/Powerboats Used
Number of Visitors Houseboat/Powerboat
Average Length of Use Houseboat/Powerboat
Total number of Visitors Houseboat/Powerboat

Tourboat

Total Number of Passengers Carried
Total Number of Tourboat Trips
Total Number of Adults (over 16)
Total Number of Children

B. Emergency: The Concessioner is responsible to immediately report the following occurrences to the National Park Service dispatch office:

1. Hazardous material spills and discharges (including all gasoline, oil and other fuels in any amount on recreation area land or water)
2. Fatalities, injuries, and illness (visitor or employee)
3. Fires
4. Vehicle or boat accidents (visitor or employee)
5. Property damage, including motor vehicle
6. Illegal drug and controlled substance abuse

REPORT THE ABOVE TO:


DISPATCH OFFICE - PHONE NUMBER (928)-608-6300

Additionally, the State of Arizona Department of Environmental Quality (phone number 1-800-234-5677) and any other regulatory agencies must be contacted in

the event of hazardous material spill and discharges (including all gasoline, oil and other fuels in any amount on recreation area land or water)

- C. Non-emergency: The Concessioner shall provide the service with a listing by department of key employees and supervisors with name and phone numbers. The Concessioner shall update this listing as necessary.

Approved effective: January 21, 20 03.

By: 
SUPERINTENDENT
Glen Canyon National Recreation Area